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H.R. 2938, "GILA BEND INDIAN RESERVATION LANDS REPLACEMENT CLARIFICATION ACT"

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Tuesday, October 4, 2011

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LEGISLATIVE HEARING ON H.R. 2938, TO PROHIBIT CERTAIN GAMING ACTIVITIES ON CERTAIN INDIAN LANDS IN ARIZONA. "GILA BEND INDIAN RESERVATION LANDS REPLACEMENT CLARIFICATION ACT."

Tuesday, October 4, 2011
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:23 p.m. in Room 1324, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, McClintock, Denham, Benishek, Gosar, Hastings [ex officio], Boren, Kildee, Faleomavaega, Luján, and Markey [ex officio].

Also present: Franks, Schweikert, and Grijalva

STATEMENT OF THE HONORABLE DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. The Subcommittee will come to order. The Chairman notes the presence of a quorum. Under Committee Rule 3[e], it is two Members, so we have a quorum and a little more. I like that.

The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on H.R. 2938, the Gila Bend Indian Reservation Lands Replacement Clarification Act.

Under Committee Rule 4, opening statements are limited to the Chairman and Ranking Member of the Subcommittee, so that we can hear from our witnesses more quickly. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the Clerk by the close of business today.

I ask unanimous consent that the gentleman from Arizona, Mr. Grijalva, be allowed to participate in the hearing. Without objection, so ordered.

I will also ask unanimous consent that following his testimony, the gentleman from Arizona, Mr. Franks, be allowed to sit with the Subcommittee and participate in the hearing. Without objection, so ordered.

Today's hearing concerns a bill to prohibit gaming on lands placed in trust for the Tohono Tribe Nation under the Gila Bend Indian Reservation Plan's replacement activated in 1986. The immediate effect of H.R. 2938 is to prohibit the development of a casino resort by the Tohono Nation on a parcel of land that the Department of the Interior has placed in trust in Glendale, Arizona.

Whether or not the Committee should move forward on H.R. 2938 requires the study of several key issues. These issues include what did Congress intend when it enacted the 1986 Gila Bend Lands Replacement Law? Does the land claim exemption to end the Indian Gaming Regulatory Act apply to Glendale projects? What are the implications of a casino on the Tribal State Compact in Arizona? Does the application of laws enacted in 1986 and 1988 result in sound public policy in 2011 or beyond, at least with respect to the situation in Glendale?

I will defer to the witnesses to explain their views on these and other questions. With that, I now recognize the Ranking Member, Mr. Boren, for five minutes for any statement he would like to make.

[The prepared statement of Mr. Young follows:]

Statement of The Honorable Don Young, Chairman, Subcommittee on Indian and Alaska Native Affairs

Today's hearing concerns a bill to prohibit gaming on lands placed in trust for the Tohono O'odham Nation under the Gila Bend Indian Reservation Lands Replacement Act of 1986.

The immediate effect of H.R. 2938 is to prohibit the development of a casino-resort by the T.O. Nation on a parcel of land the Interior Department placed in trust in Glendale, Arizona.

Whether or not the Committee should move forward with H.R. 2938 requires us to study several key issues. These issues include: what did Congress intend when it enacted the1986 Gila Bend lands replacement law? Does the land claim exception in the Indian Gaming Regulatory Act apply to the Glendale project? What are the implications of the casino on the tribal-state compact in Arizona? Does the application of laws enacted in 1986 and 1988 result in sound public policy in 2011 and beyond, at least with respect to the situation in Glendale?

I will defer to the witnesses to explain their views on these and other question.

With that, I now recognize the Ranking Member for five minutes for any statement he may have.

STATEMENT OF THE HONORABLE DAN BOREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. BOREN. Thank you, Mr. Chairman. Today the Subcommittee meets to hear testimony on H.R. 2938, a bill Mr. Franks introduced to prohibit the Tohono O'odham Nation from conducting gaming activities, under the Indian Gaming Regulatory Act, on property the Nation acquired near Glendale, Arizona.

Specifically, the bill would amend settlement legislation entered into 25 years ago to compensate the tribe for reservation lands lost due to Federal error. We want to welcome Mr. Franks, and welcome to all of our witnesses. I look forward to hearing your testimonies. And I know Mr. Grijalva will be joining us shortly, which this is actually in his district.

H.R. 2938 has strong support among Arizona tribes and the City of Glendale. The Nation and its fellow opponents of the bill are equally as strong, including the City of Peoria and a wide array of local elected officials and business leaders in Arizona.

The issues involved are complicated, and have resulted in a vigorous dispute in Federal and State Courts, as well as garnered interest from local and national media. And sadly, the dispute over the Nation's plans to pursue gaming activities on its property has turned neighboring cities and fellow tribes against one another.

I look forward to exploring a few questions that are still unclear to me. In the testimonies there is talk of a "gentleman's agreement" that existed between the tribes and the State of Arizona. What exactly were the promises made between the tribes? What was the exact timeline of those promises? And similarly, what was the timeline of the land acquisition? What is the status of the litigation, and how does that affect government intervention?

Finally, I would like to explore the government's role in this case. Should Congress get involved? And if so, what precedent will it set for future tribal gaming conflicts?

I am a strong believer in keeping promises and good-faith agreements. That said, the United States has broken its promises to Indian tribes since our country's infancy. It has taken decades to repair our relationship as trustees to the first Americans, and we have a ways to go to remedy our wrongs.

I look forward to exploring today whether this legislation will put us on the right path toward that goal. Again, I would like to thank our witnesses for being here today, and I look forward to your testimony. I yield back.

[The prepared statement of Mr. Boren follows:]

Statement of The Honorable Dan Boren, Ranking Member, Subcommittee on Indian and Alaska Native Affairs

Thank you, Mr. Chairman.

Today the Subcommittee meets to hear testimony on H.R. 2938, a bill Mr. Franks introduced to prohibit the Tohono O'odham [TO–HO–NO OH–DUM] Nation from conducting gaming activities under the Indian Gaming Regulatory Act on property the Nation acquired near Glendale, Arizona. Specifically, the bill would amend settlement legislation entered into 25 years ago by the United States and the Nation to compensate the tribe for reservation lands lost due to federal error.

Welcome, Mr. Franks, and welcome to our witnesses. I look forward to hearing your testimonies.

H.R. 2938 has strong support among Arizona tribes and the City of Glendale. The Nation and its fellow opponents of the bill are equally as strong, including the City of Peoria and a wide array of local elected officials and business leaders in Arizona. The issues involved are complicated and have resulted in vigorous dispute in federal and state courts, as well as garnered interest from local and national media. And, sadly, the dispute over the Nation's plans to pursue gaming activities on its property has turned neighboring cities and fellow tribes against one another.

I am sympathetic to both sides. I understand their positions and the stakes involved. But whether Congress should intervene to essentially undo a binding legal settlement between a trustee and its tribal beneficiary, decades after the fact, gives me pause. I am concerned that this bill will encourage similar attempts to amend well-established settlement legislation between the United State and Indian tribes.

The United States has broken its promises to Indian tribes since our country's infancy. It has taken decades to repair our relationship as trustees to the First Americans, and we have a ways to go to remedy our past wrongs. I have to ask if we are on the right path to that goal with this legislation.

With that, I look forward to hearing from our witnesses and exploring the issue further.

Mr. YOUNG. I thank the gentleman. Our first witness today is our colleague, the Representative from Arizona in the Second District, Mr. Trent Franks. Mr. Franks, welcome to the Committee. After you have finished testifying and the Members have asked any questions they might have, I invite you to join us on the dais and participate with the Subcommittee on the unanimous-consent request I made.

Mr. Franks, you are on.

STATEMENT OF THE HONORABLE TRENT FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. FRANKS. Well, thank you, Mr. Chairman. And I extend my gratitude to the rest of the Committee members as well for your consideration today. I appreciate you allowing me to testify on H.R. 2938, the Gila Bend Indian Reservation Lands Replacement Clarification Act.

Mr. Chairman, the fundamental bedrock that defines our Republic is the rule of law. Indeed, it is the rule of law that has made America the envy of the world, providing a level playing field upon which businesses can succeed or fail, based solely on their merits, not on their ability to curry favor with the government or to exploit legal loopholes, or to get away with actually flouting the law itself.

Amidst all of the debate surrounding the Tohono O'odham Nation's proposed Glendale casino, some who favor allowing construction to go forward seem to be missing one of the central points. My opposition is not an anti-tribe initiative; I harbor absolutely no ill will toward the Tohono O'odham people or the Nation. In fact, the vast majority of the other tribes in Arizona join me today in opposition to this designated casino.

This debate is not about the jobs or economic development involved, or any of the other tangential points that some would like to use to distract from the real problem with the casino. My opposition stems from the very commonsense, and indeed very vital, rule of law that says when you enter into a contract, you are expected to abide by that contract.

Incidentally, Mr. Boren mentioned a gentleman's agreement. The compact that we are talking about here is a written legal contract.

Mr. Chairman, in 2002 gaming tribes in Arizona all entered into this compact, and put that agreement up to the voters to vote upon. The agreement called for a limited number of casinos and machines in the Phoenix metropolitan area. While Proposition 202 was being debated, and passed by the voters, the Tohono O'odham Nation publicly pretended to support the measure, promising the only new casino would be constructed near Tucson. But simultaneously, the Tohono O'odham Nation was working behind the scenes to underhandedly secure the tract of land in Glendale, with which they knowingly intended to break their promise.

Furthermore, and very importantly, Mr. Chairman, the 1988 Indian Gaming Regulatory Act, the law that governs tribal gaming, says that Las Vegas-style gaming on lands acquired after October 1, 1988, may only occur under a compact between the Indian tribes and the State. The Tohono O'odham Nation has broken the compact into which it entered, thereby rendering the proposed casino in violation of the 1988 law.

Mr. Chairman, for all of the casino's proponents' attempts to sidetrack the conversation with red herrings, the issue really is as simple as that. The Tohono O'odham Nation entered into an official compact with 16 other tribes, and now they are attempting to break the compact, and their word.

By exiting the compact, the tribe is no longer eligible, under the Indian Gaming Regulatory Act, to construct a casino like the one proposed in Glendale. It is also worth asking the question, what is

the purpose of such a compact if any party may simply break it at will, without ramifications?

But assuming for a moment that the casino weren't in violation of the law. Many of the arguments being brandished by opponents to the casino still remain dishonest. Representatives of the Tohono O'odham Nation claim to have proposed the casino would create many jobs for the West Valley. However, when the City of Glendale requested the data and methodology behind the numbers being repeated to the public, their request was denied by the tribe.

And on the other hand, when the City of Glendale, per State law, put together a plan in 2002 outlining possible uses for the subject land, estimates put the number of jobs created under the City's plan at 5,756 high-quality jobs. That is excluding the construction jobs that would also be created.

Furthermore, the City's plan at buildout would have created $10.9 million in construction sales tax; and, more importantly, $5.6 million in annual recurring revenue.

The casino, on the other hand, would result in no sales tax revenue for the City of Glendale. It becomes easy to see the many reasons why the City of Glendale so strongly opposes the effort of the Tohono O'odham to forcibly build this casino in the heart of the City of Glendale.

Mr. Chairman, the fallacious arguments used by casino supporters highlight the disingenuous nature of assertions that building the casino was really just about creating jobs and economic development for the surrounding area. Developing the casino is certainly not the only means by which the tribe can profit from the Glendale land. This is not an either-or situation.

It is possible to develop the land while also abiding by the law. Unfortunately, a Las Vegas-style casino is not one of those legitimate options, per the Indian Gaming Regulatory Act.

To preserve the rule of law, Mr. Chairman, I have introduced the Gila Bend Indian Reservation Lands Replacement Clarification Act, a nice short name. My bill will allow the Tohono O'odham Nation to develop their land in a legal, responsible, and, I sincerely hope, a lucrative manner. But it will prohibit a casino, as discussed.

The bottom line is this. If the Tohono O'odham Nation's plan succeeds, no tribal compact will be safe from such duplicity in the future; and the very laws that govern tribal gaming will be rendered meaningless, subject only to the whim of any tribe that decides it no longer deems the law a convenience.

Mr. Chairman, thank you again for holding this hearing today. It is my hope at the conclusion of today's hearing, members of the Subcommittee will appreciate the importance and necessity of this legislation. And with that, thank you all very much.

[The prepared statement of Mr. Franks follows:]

Statement of The Honorable Trent Franks,
a Representative in Congress from the State of Arizona

Mr. Chairman, I want to thank you for holding this hearing and allowing me to testify on H.R. 2938, the Gila Bend Indian Reservation Lands Replacement Clarification Act.

Mr. Chairman, the fundamental bedrock that defines our Republic is the rule of law. Indeed, it is the rule of law that has made America the envy of the world—

providing a level playing field upon which businesses can succeed or fail based solely on their merits, not on their ability to curry favor with the government, to exploit legal loopholes, or to get away with flouting the law.

Amidst all of the debate surrounding the Tohono O'odham Nation's proposed Glendale casino, some who favor allowing construction to go forward seem to be missing the point: my opposition is not an anti-tribe initiative—I harbor absolutely no ill-will toward the Tohono O'odham Nation. The fact is that every other tribe in the state of Arizona joins me in my opposition to the casino. This debate is not about jobs or economic development, or any of the other tangential points that some would like to use to distract from the real problem with the casino. My opposition stems from the very common-sense and, indeed, vital rule of law that says when you enter into a contract, you are expected to abide by that contract.

Mr. Chairman, in 2002, gaming tribes in Arizona all entered into a compact and put that agreement to voters. The agreement called for a limited number of casinos and machines in the Phoenix metropolitan area.

While Proposition 202 was being debated and passed by voters, the Tohono O'odham Nation publicly pretended to support the measure, promising the only new casino would be constructed near Tucson. But, simultaneously the Tohono O'odham was working behind the scenes to underhandedly secure the tract of land in Glendale with which they knowingly intended to break their promise.

Furthermore, and very importantly, Mr. Chairman,—the 1988 *Indian Gaming Regulatory Act*—the law that governs tribal gaming—says that Las Vegas style gaming on lands acquired after October 1988 may only occur under a compact between the Indian tribe and the state. The Tohono O'odham Nation has broken the compact into which it entered, thereby rendering the proposed casino in violation of the 1988 law.

Mr. Chairman, for all of the casino proponents' attempts to sidetrack the conversation with red herrings, the issue really is as simple as that: the Tohono O'odham Nation entered into an official compact with sixteen other tribes, and now they are attempting to break the compact and their word. By exiting the compact, the tribe is no longer eligible, under the *Indian Gaming Regulatory Act,* to construct a casino like the one proposed in Glendale. It's also worth asking the question: what is the purpose of such a compact if any party may simply break it, at will, without ramifications?

But, assuming for a moment that the casino *weren't* in violation of the law, many of the arguments being brandished by proponents of the casino still remain dishonest. Representatives of the Tohono O'odham Nation like to claim the proposed casino would create many jobs for the West Valley. However, when the City of Glendale requested the data and methodology behind the numbers being repeated to the public, the request was denied by the tribe.

On the other hand, when the City of Glendale, per state law, put together a plan in 2002 outlining possible uses for the land, estimates put the number of jobs created under the city's plan at 5,756 high-quality jobs. That's *excluding* the construction jobs that would also be created. Furthermore, the City's plan, at build-out, would have created $10.89 million in construction sales tax and, more importantly, $5.6 million annual recurring revenue. The casino, on the other hand, would result in NO sales tax revenue for the City of Glendale. It becomes easy to see the many reasons why the City of Glendale so strongly oppose the effort of the Tohono O'odham to forcibly build this casino in the heart of the city of Glendale.

Mr. Chairman, the fallacious arguments used by casino supporters highlight the disingenuous nature of assertions that building the casino is really just about creating jobs and economic development for the surrounding area.

Developing a casino is certainly not the only means by which the tribe can profit from the Glendale land. This is not an either/or situation; it is possible to develop the land while also abiding by the law—unfortunately, a casino is not one of those legitimate options, per the *Indian Gaming Regulatory Act.*

To preserve the rule of law, Mr. Chairman, I have introduced the *Gila Bend Indian Reservation Lands Replacement Clarification Act.* My bill will allow the Tohono O'odham nation to develop their land in a legal, responsible—and, I sincerely hope, lucrative—manner. But it will prohibit gaming.

The bottom line is this: if the Tohono O'odham Nation's plan succeeds, no tribal compact will be safe from such duplicity in the future and the very laws that govern tribal gaming will be rendered meaningless, subject only to the whim of any tribe that decides it no longer deems the law a convenience.

Mr. Chairman, thank you again for holding this hearing today. It is my hope that at the conclusion of today's hearing, the members of this subcommittee will appreciate the importance and necessity of this legislation. I yield back.

Mr. YOUNG. Thank you, Mr. Franks. Mr. Schweikert, you want to participate in this? Without objection, we are allowing another Member to participate in this.

Mr. Boren.

Mr. BOREN. I don't have any real questions, other than a comment. You know, I have kind of been looking at this legislation, and on its face I certainly considered maybe being a co-sponsor of the bill. I have not become a co-sponsor as of yet, but it is something I looked at.

But you mentioned the compact, and you mentioned, talked about a gentleman's agreement. Actually, in the compact there is not language, am I correct, that reflects an agreement that they will not, they will not game, is that correct? So the Nation did not agree to that in a compact. Am I right on that?

Mr. FRANKS. The Nation agreed to a specific number of casinos in specific places, and that they would not go above that. The actual land itself, taken into trust at this point, was not discussed.

But just so the Committee understands the process here. There was a corporation that no one knew, it sounded like a French name, and the tribe created this corporation so that no one would know it was even a tribe buying the land.

So it was one of those situations where it was kind of a surreptitious effort from the beginning. And I know those are strong words, and I wish that it weren't.

Mr. BOREN. I think that is the real crux of this whole thing that everyone is trying to wrap their arms around. Whether it is in the compact, whether it is codified in language, whatever it is. When there is someone who has given their word, and they say hey, we are going to do this, we are not going to game in this area; and then all of a sudden yes, we are.

And then there is the number of casinos versus this area on this land. And I think that is what we are all trying to figure out today. That is why we are having this hearing, is who knew what, when; who made what kind of agreement. You know, who is kind of telling the truth.

There is obviously a lot of support for your legislation, a lot of groups. There are some on the other side, too, that have support the other way. And that is something that hopefully we can get to the bottom of today, and I certainly appreciate you being here. No further questions.

Mr. FRANKS. Thank you. Mr. Chairman, it would just be, just for the record, I just want to point out that there is no ill will in my heart whatsoever toward the Tohono O'odham people. Their leaders in this case, however, the record is very clear, to comments from Mr. Boren, that they knew indeed that they were agreeing to this, and that this was part of the public discussion. There was a major effort, initiative, where it was on television; all of the tribes had represented that this would be the agreed-upon guideline going forward.

And then at the very moment they were doing that, they were out trying to obtain this land for this purpose. And so that is the crux of the situation.

Mr. YOUNG. Mr. McClintock.

Mr. MCCLINTOCK. Well, with the respect of the surreptitious nature of the acquisition, I think back to Walt Disney, who acquired the land for Disney World in the same manner. They do that to assure that prices don't get bid up beyond market value. I don't see anything nefarious in that; that is just good business sense.

What I am unclear about is the nature of the compact itself. Did the tribe actually agree not to allow gambling on this, on the parcel that they ultimately acquired?

Mr. FRANKS. The agreement was broader than that. They agreed that there would be only a certain number of casinos. And all of the tribes in Arizona, I believe there are 17, all agreed to that. And according to that scrutiny, it would have ruled this one out.

They didn't say well, if we buy land in Glendale, we promise not to build a casino on it. And the only thing I would suggest to you related to the Walt Disney example is that Mr. Disney, you know, it is a very different situation. He didn't come in and all of a sudden declare this part of a reservation that was not subject to any of the local ordinances.

Mr. MCCLINTOCK. No, but he was very clever about not revealing that he was the purchaser of this land as he was assembling the parcels. And I don't see anything nefarious in that. Again, it was designed to assure that prices didn't get bid up as a result of their finding out who was the purchaser.

Mr. FRANKS. Well, that is understandable, and I don't disagree with you that there are different motivations. But in this case, the reason for the tribe not buying the land outright is because it would have made it very clear where they were going early on. And the tribe had every motivation to keep this a secret, for reasons that, in my judgment, skirted the law.

Mr. MCCLINTOCK. But that is not a crime. Engaging in commerce is not a crime. You know, conducting gambling on sovereign Indian land is not a crime.

Mr. FRANKS. But if they can come in and create sovereign Indian land in any city in the nation, Mr. McClintock, the precedent is pretty profound.

Mr. MCCLINTOCK. Well, yes, except as I understand it, this was unincorporated territory. It might have been surrounded by the city, but it was not part of the city. They seem to have abided by that provision of the agreement.

Mr. FRANKS. Ultimately, I would just suggest to you that the record in Arizona is very clear: The tribe was part of a legal compact, and this breaks that compact very directly. And I think the implications are pretty significant across the board.

Mr. MCCLINTOCK. Well, people have an inherent natural right to engage in commerce, and to do what they wish with their own money. I mean, I don't gamble myself; I don't enjoy it, and I am not very good at it. I feel the same about stamp collecting. But I certainly don't have the right to tell other people, who are good at it or who do enjoy it, how they should be able to spend their own money. That is a natural right that government is designed to protect.

And as I read the Declaration of Independence, when a government becomes destructive of this right, the people have the right to alter those terms. Which appears to be what this is all about.

Mr. FRANKS. Well, as you know, Mr. McClintock, no one supports property rights more than I do. This is about breaking legal agreements, and I think that that is the place where I will probably——

Mr. MCCLINTOCK. Well, again, can you define exactly what was the legal——

Mr. FRANKS. What we should do is to have the compact, I can have my staff send the compact language to your office. And we can——

Mr. MCCLINTOCK. Thank you. I yield back.

Mr. YOUNG. Are you up next?

Mr. KILDEE. Thank you very much, thank you for this hearing, Mr. Chairman. I helped create IGRA back in 1988, and that was shortly after the Cabazon decision, which gave the Indians their right, under their sovereignty, not to be governed by the State laws on gaming.

So we wrote IGRA. I remember Tony Coelho, he was kind of taking the side of the commercial casinos, and I was taking the side of the Indian casinos at the time. And we reached a compromise.

I think one of the concerns we had at the time—and I still have the concern. We have had struggles in Michigan. I have helped about half the tribes in Michigan get their sovereignty reaffirmed.

But we worried about people feeling that there is going to be a proliferation of tribes, tribal casinos. As I said, I have helped about half the tribes, probably about six or seven tribes in Michigan, get their sovereignty restored.

Some of them have tried to expand their number of casinos, and it creates a great deal of—and you and I have worked on some of these things that are probably for some and against some, and probably working for some again. But it does create, if you aren't careful, in having a proliferation of tribes, that people just don't trust the restrictions put in by IGRA.

We know that Indians have the right to do this gaming under their sovereignty; that is according to the Cabazon decision of the U.S. Supreme Court.

But I think we also have to be cautious not to create a backlash. And that is my only concern here. Whenever you add another casino, particularly when it is maybe different than the original compact or the original agreement, you just want to be careful not to create a backlash that would hurt all Indian gaming. And that is my concern.

So I just wanted to give you some of the history of this. We spent months in this room writing IGRA, and tried to put together—it was not written on Mt. Sinai, it was written on Capitol Hill, so it is not a perfect law. But it is a fairly good law. And I want to make sure that we keep IGRA and maintain that right of Indians to game under their sovereignty, as defined by the U.S. Supreme Court, but not create that backlash. And I yield back the balance of my time, Mr. Chairman.

Mr. YOUNG. Mr. Benishek.

Mr. BENISHEK. Thanks, Mr. Chairman.

Mr. YOUNG. Do you have a question?

Mr. BENISHEK. Well, I do have a question. You know, in Michigan, as Mr. Kildee said, we have had some similar issues with off-

reservation gaming. And you know, I want every tribe to do well and make a profit, and gaming allows tribes to do that.

How has it been for you, though? I mean, did you start, when did you hear about all this? I mean, isn't it kind of troubling? I mean, I found it really troubling when there is a compact, and then some, it seemed like they entered into the spirit of an agreement, and then, you know, something is all different now. I mean, did you, how did you find out about it? Does it make you feel troubled?

I mean, it troubles me to see this happening, to tell you the truth.

Mr. FRANKS. Obviously, it troubles me personally. But there is another aspect of it, and that is when there is reservation shopping, when there is an effort to create reservations in different areas in a way that seems to just empower one particular tribe, whether all the other tribes involved or not have any—to go in and turn a particular area into a sovereign nation, it has some pretty significant implications for our country.

And the law, he speaks of it as IGRA, the acronym, Mr. Kildee was so involved in writing, gives great emphasis on these compacts. They are not just, you know, casual agreements. Because in 1988 IGRA says that tribal gaming cannot be—in other words, the Las Vegas-style gaming on lands acquired after October 1988, which these were, can occur only under a compact between the Indian tribes and the State.

And we acted on that law, and we had a compact in 2002. All the tribes, every one of the tribes, including Tohono O'odham, agreed to that. We put it before the voters, and the voters passed it based on that.

So the notion that it is just a casual thing is, the 1988 IGRA gives great emphasis to the compact that was broken by the Tohono O'odham.

Mr. BENISHEK. Thank you. I will yield back.

Mr. YOUNG. Thank you, gentlemen. Mr. Eni.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I want to thank our colleague, Mr. Franks, for his testimony. And I certainly don't have any doubt whatsoever in the sincerity of his efforts in trying to resolve the problem that we have here with the Tohono O'odham Tribe.

I am glad that we have also a distinguished Member on our Committee, Mr. Grijalva, who is also from Arizona.

As you know, Mr. Chairman, the interesting thing on how the Indian gaming law came about was a very serious concern, given the fact that Indian Nations, as far as their educational and social standing in the country, were the lowest of the lowest. Not even below, it was not even under the barrel, it was below the barrel, in terms of any means of trying to find some economic opportunities to be self-sustaining.

And so Congress, in its infinite wisdom, passed the bill in 1988. So that way there were some Members who were very concerned about the morality issue, that Indians are not capable of controlling their habits in gambling or gaming. I mean, we went into this moral diatribe in thinking that Indians—everybody else can gamble, all the other States and Territories can do gambling, except the Indians.

So we passed IGRA, in making sure that there is a compact relationship existing between the tribes, as well as with the States. And some tribes have been very successful in this effort to become more self-sustaining.

And as a result, other situations have also developed, that Mr. Franks has alluded to. And if I understand it correctly, Mr. Franks, there was a legal compact signed between, what, nine tribes in Arizona, with the State of Arizona?

Mr. FRANKS. I think there were 17 tribes.

Mr. FALEOMAVAEGA. And they all signed to this compact.

Mr. FRANKS. All of the tribes agreed to this compact. All of them were signers to the compact.

Mr. FALEOMAVAEGA. And Tohono O'odham was one of them.

Mr. FRANKS. Right.

Mr. FALEOMAVAEGA. By the way, the original name of the tribe is Papago, right?

Mr. FRANKS. I believe that is correct.

Mr. FALEOMAVAEGA. I think they came from Samoa, Papago. It has a very similar ring to it.

And so what you are saying here in this proposed bill is that the tribe has not kept the provisions of this basic compact that they signed into, along with 17 other tribes.

Mr. FRANKS. That is the fundamental impulse of the bill, yes, sir.

Mr. FALEOMAVAEGA. It is not that you are against the gaming aspects of it or anything. You are just——

Mr. FRANKS. You know, I say to you in the interest of total honesty, I have never been fond of gaming. Everyone knows that. But I have never at any time gone out to try to interdict tribal gaming in any other situation, except this one. Because this one definitely, in my judgment, breaks the law.

And so I want you to know my goal here is not to have a discussion about the ins and outs of gaming. I hope that some day, that we will all realize that there are probably better ways to sustain ourselves and the tribes to sustain themselves than gaming, because conversations like this probably would never occur if——

Mr. FALEOMAVAEGA. My time is getting up, and I want to just make another observations, Mr. Franks. And that is, basically, Mr. Chairman, we have a double standard here. We have to pass a law to control the gaming aspects for Indian country, but it is OK for all the other States to do gaming, lottery, Bingos, everything else. And we are all under the same Constitution.

We all, I realize that we have a special relationship with the Native American Indians. But we passed this law to give them opportunity. I remember distinctly, Mr. Chairman, the Pequot Tribe in Connecticut. Did you know that not one commercial bank here in the United States was willing to give any kind of financial assistance when this tribe was trying to make a go with their gaming operation? They had to go to Asia to get a financial, to help them develop their gaming operations.

And by the way, it is one of the most successful operations. It has been very, very helpful to meet the needs of the Pequot Tribe in Connecticut. Even the Governor, a former Senator, from Connecticut was very, very supportive of this effort.

So if I am clear, for the record, Mr. Franks, you are not in any way opposition to whatever the Tohono Tribe may want to do with its gaming operations. But it seems like it is the place where they are having it that is causing some problems.

Mr. FRANKS. As long as they stay within their compact, they don't have anything to worry from me. Just for the record, where they are building, or trying to build the casino, no one else besides the tribe could build one, either. In other words, there is an even prohibition there for others to build a casino in the same place that they are trying to build it.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Mr. YOUNG. Mr. Gosar.

Dr. GOSAR. Well, I think the comment has to be, is that we have a double standard, yes. But sovereignty is implied, but only moderately given, under the context of the U.S. Constitution and what we have that jurisdiction of.

We still have a jurisdiction over the tribes that is Congress-based, and only Congress can give that. And we gave some parameters. We gave some base lines for that.

And what this basically does is that it also gave a confine for the tribes to orchestrate under State laws, which they are citizens, as well. And they have to work within a camaraderie type of a format, back and forth, within the State's confines.

And so I find it, it is very simple. It is that we made an agreement. Yes, I do understand why they purchased land through a secondary organization, for what Tom said.

However, the confines at that point should have been discussed. If we were looking at to put a gaming site in there, during the compact negotiations those should have been brought up, and it wasn't. Therefore, a clear violation.

We have the same laws. The laws still have to be upheld, a certain parameter. We cannot bypass that just because it is a tribal entity.

Gaming is very interesting. And I find it very interesting that my past comes forward on this. I used to represent Nevada. And it is interesting that the numbers on gaming really stay the same, as far as the numbers of monies transposed through the gaming industry. It is pretty level. It just gets divided up a lot bigger.

And what really is the showcase in Las Vegas isn't so much the gambling, but the shows. That is how they work their marketing; that is the biggest key.

Now, I know there have been a lot of inadequacies to tribes throughout history. I am no part of that. But in this regards, there is a law, and the law was violated. A compact with the Arizona State, with the citizens of Arizona, with the other tribal members here it was violated, and it is very, very clear. There is no middle ground here. This was very, very clear as to the violation that occurred here.

Anything other than having a casino is well warranted. However, not doing that is a key.

And with that after said, Congressman Franks, if this compact were to dissolve, explain to me how this compact dissolves. Do the tribes benefit?

Mr. FRANKS. Mr. Chairman, Mr. Gosar, I think if the compact totally dissolves, that chaos will be the result. There will be reservation-shopping all over the State probably, and I don't think that this will redound to the benefit of the tribes in any way. And I certainly believe that the proliferation of gaming within the cities brings with it some negative components. I don't think we can hide from that pink elephant in the room.

So I think it is chaotic if this dissolves. But more importantly, you mentioned the Federal law, the 1988 IGRA law. It specifically says that gaming must be controlled by the State compacts, which is exactly what we did. We followed the Federal law, and all these tribes agreed to that compact. And only one of them here—this is not some sort, I mean, the vast majority of the tribes are opposing this effort by Tohono O'odham to build the casino, because they understand the implications it has for the entire compact, for the entire legal construct in Arizona. And I also think it has implications for other States, as well.

Dr. GOSAR. Doesn't it open up a whole ball of wax in the State of Arizona for non-Indian gaming, and the parameters and bases and ratios that are associated with it?

Mr. FRANKS. Mr. Chairman, Mr. Gosar, it absolutely does.

Dr. GOSAR. So wouldn't you say that now what we have done is, with an individual tribe being very individualistic, we have subjugated the tribes' pretty much biggest moneymaker, outside of natural resources, to their whim, and subjugated it to the State?

Mr. FRANKS. I believe that is essentially correct. Yes, sir.

Dr. GOSAR. Thank you.

Mr. YOUNG. Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman, and thank you and the Members for their courtesy in allowing me to be a part of this hearing. I appreciate it very much.

I have no questions for my good friend from Arizona, other than, Mr. Chairman, to inject into the record Section 3[j] of the Arizona compact, which specifically allows for gaming on lands acquired by the Nation after 1988, as long as the land acquisition met certain exemptions, including, and one of those exemptions being land acquired as part of a land claims settlement.

So as we go forward with the debate and the discussion on this, I think it is important that references to the compact be specific, and I place that into the record of this hearing. I thank you very much for the courtesy.

Mr. YOUNG. I thank the gentleman. Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman; and to the Committee members, I appreciate you letting me interlope.

In 1993 I lost a year of my life, and it was on this subject. I was the Majority Whip in the State House of Arizona. And it is when IGRA had come in front of us, and it was my job to go find the votes.

We had a fairly cranky Legislature at the time in regards to the subject, so I bathed myself in this for not months, but it took us a year. And at the end of that year, we substantially created a framework, and let the Governor create compacts. So maybe this is stepping back almost 20 years for many of us. But I have to

share with you why this scares me so much, and why I also believe it is dangerous for all participating Native American communities.

First off, I will swear to you, time and time and time and time and time again, this was the question I would get from the members of the Legislature: What if we get one in Scottsdale? I represent Scottsdale. What if we had this piece of property, that State trust, or this BLM, or this were traded or that were traded? And over and over, the lawyers who were with us, some of the legal staff from John McCain's office, which actually I believe was your Senate sponsor, and others would come to us and reassure us to stop being worried about that.

And now we are here 20-some years later, and we are back at that same question.

But there is also the nature of Arizona, and this is actually one of the reasons to do this when Trent is up here. In my heart of hearts, I believe if this happens, in about half a dozen years, Arizona will be a full-scale gaming state. And here is why.

Arizona, as you know, is an initiative referendum State. We have already had rumblings of we need tax revenues, let us do racinos, let us expand slot machines at the horse-racing tracks. Well, if you do that, you blow up the compacts. And thee are others who have said fine, I would love to have casinos in Scottsdale, I would love to have one downtown next to the Convention Center.

If this goes in Glendale, in that Glendale area, I believe those advocates who desperately want to blow up these compacts, change the nature of Arizona, and move to a statewide casino gaming by option in the community standard, it does happen. Because it doesn't take that many signatures to put something on the ballot in Arizona. And this will be the excuse to do it. And my State will be different half a dozen years from now.

But more importantly, all the compacts, 20 years of work, of understanding the rules and the agreements, and huge capital investments from dozens of communities out there, will be crushed. And all the good that has been accomplished with IGRA will go away. Because the gaming is on the fringe of the urban areas, and the urban areas themselves will take over that market.

And Mr. Chairman, Mr. Franks, do I at least—you have actually run initiatives in Arizona. I mean, am I fair in my comments?

Mr. FRANKS. You are. I am living proof that any moron can get an initiative.

[Laughter.]

Mr. FRANKS. There is a story behind that. But yes, sir. No, it is not that difficult. You can do page signature drives, and it is fairly, it is not easy, but it is something that any group that is determined can put an initiative on the ballot.

But you know, the point is here, we did have an initiative on the ballot. And we did pass this agreement, by the vote of the people. And the Federal law was adhered to, and the Federal law says that this will be, the State compacts will govern this. And that was violated.

And Mr. Chairman, in case I don't get the chance here, might I offer a letter from the Governor of Arizona supporting the bill? And also a letter from members of the Arizona Legislature, as well, for part of the record.

Mr. YOUNG. Without objection.

Mr. SCHWEIKERT. And Mr. Chairman, Mr. Franks actually stole my little closing sentence. After years of fussing back and forth, and not knowing how many machines, and the Indian communities actually going to the ballot, we finally reached an agreement. And with an overwhelming vote of the public in the State.

This is a unique agreement. You cannot have this on non-tribal lands outside the compacts. This is a unique franchise given to these tribal communities. And there is now sort of an understanding—well, actually what, legal and a vote—understanding. This will cause a cascade that will destroy that understanding in our communities.

Thank you, Mr. Chairman.

Mr. YOUNG. I want to thank you, Mr. Franks. This has been good testimony, and thanks for introducing the legislation. You are excused.

Mr. FRANKS. Thank you, Mr. Chairman. Thank all of you.

Mr. YOUNG. Bring up the next panel. Ms. Paula Hart, Director of the Office of Indian Gaming, Office of Assistant Secretary Indian Affairs, U.S. Department of the Interior. Ms. Hart, you are up.

STATEMENT OF PAULA HART, DIRECTOR OF THE OFFICE OF INDIAN GAMING, OFFICE OF THE ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Ms. HART. Good afternoon, Mr. Chairman and members of the Committee. My name is Paula Hart. I am the Director for the Office of Indian Gaming, in the Office of the Assistant Secretary for the Department of the Interior.

Thank you for the invitation to be here to provide the Department's testimony on H.R. 2938, the Gila Bend Indian Reservation Land Replacement Clarification Act, which is a bill that if enacted, would prohibit Class II and Class III gaming activities on certain lands in Arizona.

H.R. 2938 speaks directly to one tribe, the Tohono O'odham Nation, which is a Federally recognized tribe located in southern and central Arizona. The Nation has approximately 30,000 enrolled members; it has one of the largest tribal land bases in the country.

In 1986, Congress enacted the Gila Bend Indian Reservation Lands Replacement Act, Public Law 99-503, to redress flooding that occurred on the Nation's land that resulted from the construction of the Painted Rock Dam on the Gila River. Both the Bureau of Indian Affairs and the Army Corps of Engineers assured the Nation that flooding would not impair other culture use of lands within the Nation's San Lucy District.

Nevertheless, construction of the dam resulted in continuous flooding of nearly 9,880 acres of land within the San Lucy District, rendering them unuseable for economic development.

The Gila Bend Act authorizes the Nation to purchase private lands as replacement reservation lands. It authorizes the Secretary of the Interior to take up to 9,880 acres of land in Pima, Pinal, and Maricopa Counties, into trust for the Nation, subject to certain other requirements; and mandated that the land shall be deemed to be Federal Indian reservation for all purposes.

H.R. 2938, the Gila Bend Indian Reservation Land Replacement Clarification Act, would amend the original Gila Bend Act of 1986 by prohibiting Class II and Class III gaming, as defined under the Indian Gaming Regulatory Act, on the lands taken into trust, pursuant to the Gila Bend Act of 1986.

The Department opposes H.R. 2938. Congress was clear when it originally enacted the Gila Bend Act of 1986, where it stated that replacement lands shall be deemed to be Federal Indian reservation for all purposes. By this language, Congress intended that the Nation shall be permitted to use replacement lands as any other tribe would use its own reservation lands. The Gila Bend Act was intended to remedy damages to the Nation's lands caused by flooding from the construction of the Painted Rock Dam.

The United States and the Tohono O'odham Nation agreed to the terms of the Gila Bend Act, which included restrictions on where and how the Nation could acquire replacement lands.

H.R. 2938 would impose additional restrictions, beyond those agreed upon by the United States and the Tohono O'odham Nation 25 years ago. The Department cannot support unilaterally altering this agreement so long after the fact.

While the purpose of H.R. 2938 may restrict the Nation from conducting gaming on the 53.54-acre parcel in Maricopa County, Arizona, the effect of H.R. 2938 could reach all lands under the Gila Bend Act.

Also, H.R. 2938 could alter established law that prohibits gaming authorized under the Indian Gaming Regulatory Act on lands acquired by the Secretary into trust for the benefit of an Indian tribe after October 17, 1988, except in certain circumstances. The effect of H.R. 2938 would be to add tribe-specific and site-specific limitations to IGRA's prohibitions.

The process of determining whether land qualifies for an exception to this prohibition is firmly established. The Department is aware the Nation's request to acquire land in trust for gaming purposes in Maricopa County has been a subject of significant contention among tribes and local governments in the State of Arizona. However, the Indian Gaming Regulatory Act already establishes a process to determine whether lands are eligible for gaming, and that question is pending before the Department.

The Department respects Congress's authority to legislate in this area. However, we are concerned about establishing a precedent for singling out particular tribes through legislation to restrict their access to equal application of the law.

This Administration has consistently held the position that fair and equal application of our laws toward all tribes is essential to upholding the United States' nation-to-nation relationship with Indian tribes.

For these reasons, the Department opposes H.R. 2938. This concludes my prepared statement, and I am happy to answer questions from the Subcommittee.

[The prepared statement of Ms. Hart follows:]

Statement of Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior

Good afternoon, Mr. Chairman and Members of the Committee. My name is Paula Hart. I am the Director of the Office of Indian Gaming in the Office of the Assistant

Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's testimony on H.R. 2938, the 'Gila Bend Indian Reservation Lands Replacement Clarification Act', which is a bill that if enacted would prohibit Class II and Class III gaming activities on certain lands in Arizona.

Background

The Tohono O'odham Nation (Nation) is a federally recognized tribe located in southern and central Arizona. The Nation has approximately 30,000 enrolled members, and has one of the largest tribal land bases in the country.

The San Lucy District is a political subdivision of the Nation. It was created by Executive Order in 1882 and originally encompassed 22,400 acres of land. In 1960, the U.S. Army Corps of Engineers (Corps) completed construction of the Painted Rock Dam on the Gila River. Both the Bureau of Indian Affairs (BIA) and the Corps assured the Nation that flooding would not impair agricultural use of lands within the San Lucy District.

Nevertheless, construction of the dam resulted in continuous flooding of nearly 9,880 acres of land within the San Lucy District, rendering them unusable for economic development purposes. Included among the destruction was a 750-acre farm that had previously provided tribal revenues. The loss of these lands forced a number of the Nation's citizens to crowd onto a 40-acre parcel of land.

Gila Bend Indian Reservation Lands Replacement Act P.L. 99–503

Congress first moved to remedy the plight of the Nation's San Lucy District in 1982, when it directed the Secretary of the Interior to study the flooding and identify replacement lands within a 100-mile radius. After attempts to find replacement lands failed, Senators Barry Goldwater and Dennis DeConcini, along with then-Congressmen John McCain and Mo Udall, sponsored legislation to resolve the situation.

Congress enacted the Gila Bend Indian Reservation Lands Replacement Act (Public Law 99–503) (Gila Bend Act) in 1986 to redress the flooding of the Nation's lands.

The Gila Bend Act authorized the Nation to purchase private lands as replacement reservation lands. It authorized the Secretary of the Interior to take up to 9,880 acres of land in Pima, Pinal, or Maricopa Counties into trust for the Nation, subject to certain other requirements, and mandated that the land "*shall be deemed to be a Federal Indian Reservation for all purposes.*"

Assistant Secretary's Decision

The Nation purchased a 53.54 acre parcel (Parcel 2) in Maricopa County, Arizona, and requested that the Secretary acquire the land in trust pursuant to the Gila Bend Act. On July 23, 2010, Assistant Secretary Echo Hawk issued a letter to Ned Norris, Jr., Chairman of the Tohono O'odham Nation, stating that the Nation's request for the trust acquisition of Parcel 2 satisfied the legal requirements of the Gila Bend Act and that the Department was obligated to, and therefore would, acquire the land in trust pursuant to congressional mandate. This decision is currently the subject of several lawsuits, one of which is pending before the United States Court of Appeals for the Ninth Circuit.

H.R. 2938

H.R. 2938, the Gila Bend Indian Reservation Lands Replacement Clarification Act would amend the original Gila Bend Act of 1986, by adding at the end of "*Any such land which the Secretary holds in trust* [pursuant to the Gila Bend Act of 1986] *shall be deemed to be a Federal Indian Reservation for all purposes,":* "except that no class II gaming or class III gaming activities, as defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703), may be conducted on such land."

The Department opposes H.R. 2938.

Congress was clear when it originally enacted the Gila Bend Act in 1986, where it stated that replacement lands "*shall be deemed to be a Federal Indian Reservation for all purposes.*" By this language, Congress intended that the Nation shall be permitted to use replacement lands as any other tribe would use its own reservation trust lands.

The Gila Bend Act was intended to remedy damage to the Nation's lands caused by flooding from the construction of the Painted Rock Dam. The United States and the Tohono O'odham Nation agreed to the terms of the Gila Bend Act, which included restrictions on where and how the Nation could acquire replacement lands. H.R. 2938 would impose additional restrictions beyond those agreed upon by the United States and the Tohono O'odham Nation 25 years ago. The Department cannot support unilaterally altering this agreement so long after the fact.

While the purpose of H.R. 2938 may be to restrict the Nation from conducting gaming on the 53.54 acre parcel in Maricopa County, Arizona, the effect of H.R. 2938 would reach ***all*** lands under the Gila Bend Act—including those that have already been acquired.

H.R. 2938 could also alter established law that prohibits gaming, authorized under the Indian Gaming Regulatory Act (IGRA), on lands acquired by the Secretary into trust for the benefit of an Indian tribe after October 17, 1988, except in certain circumstances. The effect of this legislation would be to add a tribe-specific and site-specific limitation to IGRA's prohibition. The process for determining whether lands qualify for an exception to this prohibition is firmly established.

The Department is aware that the Nation's request to acquire land in trust for gaming purposes in Maricopa County has been the subject of significant contention among tribes and local governments in the State of Arizona. As previously noted, the Assistant Secretary's decision on July 23, 2010, to approve the trust acquisition pursuant to congressional mandate has been the source of litigation, which is still pending. However, IGRA already establishes a process to determine whether lands are eligible for gaming, and that question is pending before the Department. The Department's opposition to H.R. 2938 is not based upon any particular analysis of whether the land in Maricopa County would be eligible for gaming, but rather for the other policy concerns expressed in this testimony.

The Department respects Congress's authority to legislate in this area. However, we are concerned about establishing a precedent for singling out particular tribes through legislation to restrict their access to equal application of the law. This Administration has consistently held the position that fair and equal application of our laws toward all tribes is essential to upholding the United States' nation-to-nation relationship with Indian tribes.

For these reasons, the Department opposes H.R. 2938. This concludes my prepared statement. I am happy to answer any questions the Subcommittee may have.

Mr. YOUNG. I thank you. Just one question, Ms. Hart. Do you support the compacts and the intent of IGRA?

Ms. HART. Yes, we do.

Mr. YOUNG. OK. I believe under that compact, the Tohono Nation, and if the tribe operates four gaming facilities, then at least one of the four gaming facilities shall be at least 50 miles from the existing gaming facilities of the tribe in the Tucson metropolitan area, as of the effective date; and have no more than 645 gaming devices, and having no more than 75 card tables.

Now, they signed onto that compact. They said nothing about Glendale. Is that correct?

Ms. HART. In that section of the compact they did not, you are correct.

Mr. YOUNG. That is right. So what I am suggesting here, this is about location, location, location.

Ms. HART. OK.

Mr. YOUNG. If they were to, in fact, have the land that was acquired before the IGRA, and they signed this compact afterwards, it was to be in Tucson, is that correct?

Ms. HART. Can you restate the question?

Mr. YOUNG. Well, I mean, the land in debate here was purchased before.

Ms. HART. Right, OK.

Mr. YOUNG. Now, the compact they signed was related to Tucson, and that is a compact with the State, with all the other tribes, including themselves.

Ms. HART. That is correct.

Mr. YOUNG. So why are they trying to move into an area that doesn't even, is nowhere near Tucson? It is 100 miles away?

Ms. HART. I believe you have to look at Section 3[j] of the compact, which would include, which states, and I think was read earlier in the record, that under 3[j], it does contemplate gaming on lands that are exceptions to the 2719 prohibitions.

So Section 3[j] of the compact does contemplate other lands.

Mr. YOUNG. I will have to review this, because it just appears to me, this compact is pretty telling. Mr. Schweikert, he worked, how many times you worked on it. And I am just curious, that is all.

Mr. Luján. Congratulations, you got promoted.

Mr. LUJÁN. Well, for the time being.

Mr. YOUNG. Right over Mr. Kildee? What is this freshman stuff?

Mr. LUJÁN. I think Mr. Boren went down the line there, Mr. Chairman. With that being said, thank you for being here, Director Hart. It is always a pleasure to be able to visit with you.

Do you think that this is something which Congress should get involved in? And if so, how? And what is the role of the State of Arizona that they should take in this situation?

Ms. HART. I think that Congress enacted, in 1986, a settlement Act between the Department of the Interior and the Tohono O'odham Nation, and I think in that case that is when Congress acted. And they mandated that the Secretary take this action. I don't think that any further clarification needs to be made.

Mr. LUJÁN. If H.R. 2938 is not enacted and the Nation is able to move forward with their proposed plans to open a fourth casino, current gaming compacts could be nullified. What is your response to that?

Ms. HART. From my reading, I actually looked at this in 2002, and then again I was asked, and I wrote a letter in 2009. As I read the compacts, and as in the position of the Department, is the compacts allow for, as I said, Section 3[j] allows for land to be, land outside of the reservation to be gamed upon, as long as it is in accordance with Section 2719 of the Indian Gaming Regulatory Act.

And in this case, that is being looked at. And if that does occur, that where the tribe is in compliance with the Indian Gaming Regulatory Act, then that would not nullify the compact.

Having said that, also you are right, unless it is like a fifth facility, which we are not aware of.

Mr. LUJÁN. Has the Administration made a determination to that effect yet, one way or the other?

Ms. HART. That is under review in the Solicitor's Office.

Mr. LUJÁN. Thank you, Mr. Chairman, I yield back.

Mr. YOUNG. Just before I go to Mr. McClintock, I still can't get around this idea there was a compact. And I think all the tribes signed onto it, and the State signed onto it.

Ms. HART. That is correct.

Mr. YOUNG. Would this new land, if it was purchased, how could you, as the Department of the Interior, issue a license to gamble if there was no compact? Because they would have to have a compact like the rest of them, would they not?

Ms. HART. On the new land?

Mr. YOUNG. Yes.

Ms. HART. Well, because the terms of the compact itself contemplate——

Mr. YOUNG. No. Before any gambling took place, before any of the tribes had gambling in Arizona, was there not a compact, and it had to be signed by the Governor?

Ms. HART. Yes.

Mr. YOUNG. And it had to be set up with the Legislature?

Ms. HART. Yes.

Mr. YOUNG. Now, if this new land is purchased for a gambling casino, the Governor is cut out and the Legislature is cut out?

Ms. HART. Well, I would not say that the Governor or the Legislature would be cut out. I think the Governor, when he signed the agreement, was aware of Section 3[j] in the compact.

Mr. YOUNG. Not, see, I disagree with that. Because the land was purchased, purchased prior to IGRA.

Ms. HART. OK.

Mr. YOUNG. It wasn't purchased to gamble. It was a settlement for flooding. OK?

Ms. HART. OK.

Mr. YOUNG. So now, you mean to tell me that a tribe can go to the Department of the Interior, and you can OK their gambling, even if the State objects to it? That was never the intent of IGRA. I was there. Kildee was here. But that was never the intent of IGRA. It was supposed to be a cooperation. It was done in Michigan, it has been done in California, every one has been signed. So you mean to tell me now, the TO gets this land, they could build a casino even though the State objects to it?

Ms. HART. I wouldn't say the State objected to it, because they signed the compact in 2002, which would allow it.

Mr. YOUNG. So did TO.

Ms. HART. That is right.

Mr. YOUNG. Said they would not come out of Tucson.

Ms. HART. The compact terms itself, which is all that we have to look at, and Class III gaming is regulated by the compact. And I don't see anything within the bounds of this agreement that would prohibit—and actually what it says is, under 3[j], that the tribe can, as long as they comply with the terms of IGRA.

Mr. YOUNG. But the terms of IGRA says there has to be a compact with the Governor.

Ms. HART. That is right.

Mr. YOUNG. Has to be. Now, what I am saying, if they get this land and the Governor doesn't agree, and we have a letter that says they oppose it; the Legislature opposes it, and all but one member of the delegation oppose it; now, how could they get the license to put a casino on there?

Ms. HART. As I stated, the compact was signed, it had a provision in there that allowed for after acquired land, under 3[j].

Mr. YOUNG. No, no, we are not arguing about that. I am suggesting, what role does the Governor and the State Legislature have in issuing and allowing gambling on this new land?

Ms. HART. The compact that they entered——

Mr. YOUNG. No, no. What role do they have now? Any role? Or is it just going to be your Department?

Ms. HART. The Department of the Interior is looking at that as of right now. Under the Settlement Act, they are reviewing——

Mr. YOUNG. The Settlement Act is different than the compact.

Ms. HART. Right.
Mr. YOUNG. That is different. That was for flooding.
Ms. HART. Yes.
Mr. YOUNG. OK, just put that aside.
Ms. HART. OK.
Mr. YOUNG. We are talking about this new land. How can they get a license to gamble if the State objects to it, and the legislative body objects to it?
Ms. HART. OK, under the Indian Gaming Regulatory Act.
Mr. YOUNG. They have to have a compact with the State.
Ms. HART. That is right.
Mr. YOUNG. OK. So if the State doesn't give them a compact, how can they have a casino on that new land?
Ms. HART. They do have a compact, though.
Mr. MCCLINTOCK. I want to keep drilling down on this point, because I think it is very important. The crux of the argument in favor of the bill is that the provisions of the compact signed by the tribe limited both the number of machines and proximity to other establishments.
Ms. HART. That is correct.
Mr. MCCLINTOCK. And that this site violates that compact. But what you just said is no, there is an exception within the compact itself to a land acquisition of this type. Would you elaborate on that, please?
Ms. HART. Section 3[j] of the compact allows for the tribe to do gaming on land acquired after, as long as it complies with the Indian Gaming Regulatory Act, Section 2719. And under Section 2719 there are a number of exceptions.
One of the exceptions, and the one that applies here, is that if the tribe has a land acquisition that was mandated by Congress.
Mr. MCCLINTOCK. So that is a very clear exception to the restrictions in the compact, that both the State and the tribe signed.
Ms. HART. Correct.
Mr. MCCLINTOCK. So the tribe is entirely within its rights, under the terms of that contract, because of the nature of the acquisition itself.
Ms. HART. That is correct
Mr. MCCLINTOCK. Mr. Chair, I have to say, I am rather sympathetic. I had a similar situation in my district. The Enterprise Rancheria lost its land to an inundation caused by a dam. They have been attempting for some time to acquire replacement property. And the first thing that happens is the tribes with existing establishments, in this case I think it was Auburn, ganged up on this poor little Rancheria, and tried to shut them down.
I am very sympathetic to the situation of a tribe that is simply trying to replace property that was destroyed by a similar inundation, and facing the same kind of opposition from groups that simply don't want to compete for people's business.
Mr. YOUNG. Well, we have a difference of opinion. When the voters went to the poll and they voted on it, they thought they were buying the same car. They didn't expect to get a Mercedes when they actually bid on a Volkswagen.
Mr. Kildee. No questions. Mr. Denham. See, I go down the line according to seniority, but go ahead.

Mr. DENHAM. Let me first ask, Prop 202, how is that different from Prop 1[a] and Prop 5 in California?

Ms. HART. I am familiar with both of the Propositions, but I am not sure what you are—I think, I am not sure.

Mr. DENHAM. I think they are very similar, and so I am just trying to understand if there are any nuances there, if the people of the State of California, for example, pass something that they felt—I mean, I remember the ads very, very clearly. We weren't going to have reservation-shopping, we weren't going to have off-res gaming; tribes were not going to continue to leap-frog other tribes and move into urban areas. Which is exactly what it looks like is happening here. Whether you are talking about California, or Arizona, or many other States across the nation.

So you know, there was a set criteria. I was actually pretty surprised that that new criteria has changed from an administrative standpoint, and how that is going to affect tribes across the entire nation.

You know, in the case of California, North Fork does have property. I understand that thee are issues with that property, the same way that Enterprise has issues there, as well. But if we continue to allow this leap-frogging from one area to another, I mean the '99 compacts in California allow two casinos. So why wouldn't every tribe that has authorization for two casinos leap-frog the next one to another opportunity that is going to be more focused on gaming, rather than on tribal sovereignty?

Ms. HART. Well, the only thing I guess I can add to that is we, in the Office of Indian Gaming for the Assistant Secretary, we follow the Indian Gaming Regulatory Act. We interpret it, and we follow the law as it is stated.

And in Enterprise and North Fork's case, what just happened is that in those cases, it does go to the Governor. But that is different from a settlement act.

Mr. MCCLINTOCK. You are not following the law. You are changing an administrative policy. You have changed what was an administrative policy under George Bush to a new administrative policy under President Obama.

So I guess my question is, what is the necessity to change that policy?

Ms. HART. There were a number of lawsuits filed under the Bush, under the policy that was applied under the Bush Administration. And they were all regarding the way that policy came into effect.

And so we did, once this Administration came in, we did a number of consultations regarding the substance of the policy. And once we——

Mr. MCCLINTOCK. OK, what are the changes in the substance of the policy?

Ms. HART. What we did is we withdrew the Carl Artman memo, which added a commutability policy on how far you could go away to do off-reservation gaming.

Mr. MCCLINTOCK. Why? Why extend the distance from a community?

Ms. HART. Based on the consultation that we held.

Mr. MCCLINTOCK. We are still not getting to the bottom of the point. We had a set criteria of a certain amount of mileage from their ancestral lands.

Ms. HART. Right.

Mr. MCCLINTOCK. And now we have extended that to allow a further distance, and closer to an urban area.

Ms. HART. I am not, I am not sure that that is what we have done.

Mr. MCCLINTOCK. OK, what have we done?

Ms. HART. What we have done is we have withdrawn the commutability, the Carl Artman memo. We have withdrawn that. We have looked at, what we have to do, what we are doing now is we are looking at each application on a case-by-case basis.

Mr. MCCLINTOCK. OK. But the administrative policy that has been changed here is extending the mileage that you can go, the greater distance that you can go away from current tribal lands. What is the reason for changing that mileage criteria?

Ms. HART. I don't think that that is what it does. I don't think we have extended the mileage that you can go away.

Mr. MCCLINTOCK. Wasn't it 30, 50 now and it was 33 before?

Ms. HART. No, no. That was, there was no——

Mr. MCCLINTOCK. It is the Administration's policy; I would expect you to know. But I will make sure before my next round of questioning that I get the answer for you.

Ms. HART. Well, in the Carl Artman memo, there was a commutability distance. And basically it wasn't a mileage, it was, is the distance from your existing reservation to where you want to go a commutable distance. So there was no mileage.

Mr. MCCLINTOCK. And how is commutable defined?

Ms. HART. What we did is we looked at a number of different definitions on that. And so, under the Carl Artman memo—and then what the problem was, is under the APA we didn't do consultation, and that memo was enacted.

So we came back, we did the consultation, and we said it is a case-by-case basis. Still, again, under Carl Artman, there was no set number of how far is commutable. Because in each case, like in D.C., a commutability distance would be a little bit further out than if you go into the middle of Wyoming. So now that is how we are looking at it.

Mr. YOUNG. Thank you, time is up. Mr. Eni.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Ms. Hart, I am trying to follow the line of questioning the Chairman is asking, and I am just trying to get in my own mind exactly the sequence here.

Congress passes IGRA in 1988, and allows States to have contract agreements with tribes to establish gaming operations. Arizona is one of those States that has this agreement with, what, 17 tribes I understand. Tohono, as well as the Gila Bend Tribe, all the others are all part of the compact.

Ms. HART. Right.

Mr. FALEOMAVAEGA. Apparently one of the tribes has expressed concern that the Tohono is not complying with the provisions of that contract agreement. And the reason for Congressman Franks's proposed bill is simply to express the will of Congress, and tell the

Tohono Tribe go back to the agreements that you made with the contract.

Now you are saying the Department of the Interior opposes the bill.

Ms. HART. Right.

Mr. FALEOMAVAEGA. Can you explain exactly why the Department of the Interior opposes the bill, again?

Ms. HART. Yes. Because the Department cannot support a unilateral altering of an agreement 25 years after the agreement, when the Tohono O'odham and the United States made an agreement back then to change the terms of those agreements.

Mr. FALEOMAVAEGA. Would it be possible for the other tribes to take the Tohono Tribe to Court? Simply the fact that there is a contractual relationship with the State, one tribe isn't complying, so could this matter have been taken to the Court?

Ms. HART. Yes, I believe it is being litigated.

Mr. FALEOMAVAEGA. Or the other option is to come to the Congress and provide a remedy directly. And you are saying that the Department of the Interior does not allow unilateral, what was it again?

Ms. HART. Well, Congress certainly can do whatever they choose. The Department's position is we don't unilaterally support, we don't support a unilateral change.

Mr. FALEOMAVAEGA. What would be your recommendation to cure the concerns that Congressman Franks has shared with the members of the Committee?

Ms. HART. I believe, based on that, I think the Tohono O'odham Tribe should be a part of the agreement.

Mr. FALEOMAVAEGA. I know, we understand that. They are part of the agreement. But again——

Ms. HART. Well, clarification, then.

Mr. FALEOMAVAEGA. Well, not really for—how would you remedy the situation where these other tribes have expressed concerns that the Tohono Tribe is not acting in compliance with this contract, which is authorized by IGRA?

Ms. HART. The difficulty is, under the terms of the compact, all of the tribes have——

Mr. FALEOMAVAEGA. Wait, wait, compact. What do you mean, the contract?

Ms. HART. The compact, the Tribal-State Compact, which 17 tribes signed off on.

Mr. FALEOMAVAEGA. OK.

Ms. HART. Under the terms of that compact, all of the tribes agreed that as long as a tribe—any of them could do this, any one of them could do this—as long as they comply with Section 2719 of the Indian Gaming Regulatory Act, then they have agreed to, they have agreed to this.

Mr. FALEOMAVAEGA. OK, I am visiting the Tohono Tribe reservation, if you call it. How far is the tribal location from the City of Glendale? I know it is closer to Tucson than it is to Phoenix.

Ms. HART. Right.

Mr. FALEOMAVAEGA. So how far is it from Glendale?

Ms. HART. We did do a number of maps on that specific number, but we did it from a different, a bunch of different areas. And I

think it went from 53 miles in certain parts of the reservation, to like 117 miles. And then that varies depending on driving distance and a straight-line distance.

Mr. FALEOMAVAEGA. It was part of the prohibitions not to do anything outside 50 miles? Can you elaborate this 50 miles that we talked about earlier? Restriction, or was it allowable under the law for, for the Tohono Tribe to purchase, was it to purchase the land in Glendale to conduct a——

Ms. HART. I believe the part, you are talking about on the settlement agreement?

Mr. FALEOMAVAEGA. I am talking about Glendale. This seems to be where the land is in controversy.

Ms. HART. Right.

Mr. FALEOMAVAEGA. OK. And the Tohono Tribe wants to purchase, right? To conduct a casino or whatever.

Ms. HART. Right.

Mr. FALEOMAVAEGA. How far is that from the Tohono Reservation?

Ms. HART. Depending on, because of the size of the reservation, depending on where you are, it is between 53 and about 117 miles.

Mr. FALEOMAVAEGA. So it is beyond the 50-mile, if there is a restriction, beyond 50 miles or whatever?

Ms. HART. It is beyond, yes.

Mr. FALEOMAVAEGA. It is further than 50 miles then, OK. All right, Mr. Chairman, my time is up. Thank you.

Mr. YOUNG. Before I go to Mr. Gosar, Ms. Hart, we requested, you are a career employee, right?

Ms. HART. That is correct.

Mr. YOUNG. Yes. So before we are too cruel to her, we requested a political appointee to be here, somebody that was a little higher ranked. And they put poor Ms. Hart into the briar's patch, gentlemen, so just keep that in mind. So that as you beat up on her, be kind.

She is doing very well for herself, but I am just saying, I would prefer, Mr. McClintock, that we had somebody, when we ask the Administration, they send somebody we asked for. And this is one of the gripes I have had in this Committee in every Administration. They sort of thumb their nose at the Congress, and it just really frustrates me. If you guys don't understand that, you had better understand it because we are equal branches of the government. When we request somebody come up here, we want them up here. But conveniently, they are all out of town today. I would like to check their travel schedule and see where they really are.

[Laughter.]

Mr. YOUNG. This is not the only Administration I have this complaint about, so just keep it in mind. Because when we do allow them to do what they have done to us today from that side of the aisle, they are thumbing their nose at us. It is time that stops.

What is wrong with this nation today? There is no king. If you read the Constitution very closely, it is the Congress that is to lead this nation, and the Congress is to make the laws of the nation, not the President and his Executive Order. We should be ashamed allowing this to happen.

Mr. Gosar, if you are ready.

Dr. GOSAR. And I am sorry that you have to answer this, but you work for the government, and therefore, there comes the work. So is the Department unified on this decision? Is your Department unified in this decision, that you have come forward that you are against this bill?

Ms. HART. Yes, the Department has approved the statement that I have made today, yes.

Dr. GOSAR. OK. So now let me ask you a question. What took you so long for the deliberation in this process? Because there is something wrong here, there is something very wrong here.

In our world, if this was Wall Street, this is called insider trading, OK?

Ms. HART. Yes.

Dr. GOSAR. That is wrong. And you know this is wrong. Because what has happened is, everybody is sitting at the table playing cards, but we have a hidden card here. And we knew all along. We should have been telling the Tohono O'odham this was wrong, and that it violated the whole precedence of this decision.

Because what you did is you put the, subjugated the whole State of Arizona, every part of the compact, to this breach. Because they knew something about an insider-trading issue. That is where you should have gone, this is where you went wrong, is that you should have adjudicated something saying you are wrong here. Because you could have used this for any other thing here, but you had insider trading. You should have come forward within this compact, but you knew in the context of this legal agreement, this binding agreement, that you put, that we put, Congress put all parties at the table.

They didn't just put the Tohono O'odhams; they put all the tribes there.

Ms. HART. Right.

Dr. GOSAR. They put the State there. And they not only said, not allowed it, but demanded a compact. Did they not?

Ms. HART. I believe so.

Dr. GOSAR. So if it was insider trading, why haven't you said this is wrong?

Ms. HART. This issue is being litigated.

Dr. GOSAR. OK, then let us step back again. Thee are a number of ways. I mean, a lot of times the quandary for litigation has to do because of the jurisdiction of the tribes. It rests with Congress, and Congress only, does it not?

Ms. HART. Yes.

Dr. GOSAR. Wouldn't it be interesting to acknowledge that there was a de facto problem here? I know we spent years and years and years going over criminal jurisdictions within tribal aspects versus our normal code. They are similar, but they are not perfect.

Now, we are going into an area that has vastly never been explored, is that true?

Ms. HART. Yes.

Dr. GOSAR. Wouldn't it be interesting to have the dialogue saying we have a problem here, but actually acknowledging that the problem is here? Because we have had a problem here. What is wrong is wrong, and this is wrong. And then you can work out the rest.

But to have insider trading, having insider information, is desperately wrong. I don't care if you cut it thin, it is still ham. And I find this, I find this very repugnant, that we are even having this discussion based on the individuality breakup of tribes. On a compact and an agreement. This makes everybody look horribly wrong, horribly bad. And it is for greed. It is for greed.

Because I look at all the tribes, and I serve a lot of the tribes. And what is going to happen if this goes forward, there is no agreement that is sacred any more. Nothing. And that is where you should be principally held upon, is the rule of law. And I have a lot of disdain for what is going on right here. This is horrible.

And that is why I asked you the question, that there is more to this. And I would have hoped that everybody in this Department would have well taken this into consideration, that this law was a quandary that was put in, in this exception. With insider trading, that supersedes the wrong on anything else here. And then we can reevaluate the law. I think that is what is horrible here.

So I am sorry to say that I, at least, can see wrong, right from wrong. And I know that there are 16 other tribes in this same quandary in Arizona. I also know the State is doing the same thing. Because we shouldn't be in the aspect of making laws from an administrative capacity. It should come from Congress. It should go through the right process.

So with that, I am going to say pass it up the buck.

Mr. .GRIJALVA Thank you, Mr. Chairman.

Mr. YOUNG. You are ready.

Mr. GRIJALVA. No similarity, but just to point out, I think the Chairman made an excellent point about the will of Congress and the role of Congress. And legislation to acquire trust land that I proposed for the Cocopah in the Yuma area, there is a prohibition against gaming if that land were to be acquired. That prohibition was part of the legislative process, part of the will of Congress to include that, and with the consent of the Cocopah Nation.

The return of lands that were taken from the Colorado River tribes is something we were successful in returning to that, to that Nation years ago. Again, the prohibition existed. I didn't like the prohibition, but that was the way the legislation was going to move, and we got the consent of the Colorado River tribe to allow that provision of no gaming on their newly acquired land.

Let me ask Ms. Hart, has the other Nations legal, you know, what they are doing now, in going through asking both the Department of the Interior and the National Gaming Commission for a determination on whether that West Valley land is eligible for gaming? Is that appropriate and legal, and is it legal under the compact?

Ms. HART. That is part of the process for doing gaming on the land, yes.

Mr. GRIJALVA. And I understand that we are dealing with issues of location, issues of, all the issues that have been allowed here. But I want to reiterate, and enter it into the record, that under the compact itself, the exceptions explicitly listed there for settlement land is there. And I am assuming that is why the Nation is going through the process to validate and verify and legally get the reading on that exception.

Ms. HART. That is correct.

Mr. GRIJALVA. Let us walk back in history before we jump too far ahead. In 1986, did gaming exist when the Settlement Act was passed?

Ms. HART. Gaming did exist, yes.

Mr. GRIJALVA. OK. And was there a prohibition on gaming on newly acquired trust lands in 1986?

Ms. HART. Not that I am aware of.

Mr. GRIJALVA. And Congress was considering legislation to regulate Indian gaming generally, and to prohibit gaming on newly acquired lands, prior to and during 1986?

Ms. HART. The hearings on gaming started in 1984.

Mr. GRIJALVA. So Congress, in their Settlement Act, if they wanted to prevent the Nation from gaming on land it acquired under that Settlement Act, wouldn't they have, wouldn't now-Senator McCain and then-Senator DeConcini explicitly say so in that piece of legislation?

Ms. HART. Yes, they could have done that.

Mr. GRIJALVA. And both of them were working on the IGRA legislation at that same time. And so the settlement occurred almost at that period of time, and before—and I hope I have my dates right, because thee are about 28 lawyers in the audience, and I am sure they are checking that right now.

The other proposition that I feel is important to ask you about. Do you feel, I think it was asked, as a general proposition that Congress, after the fact, should feel free to unilaterally amend an Indian land or a water rights settlement without the consent of the tribe? And this process allows consent to be the issue, which that settlement was originally negotiated on. Whether it is water, whether it is this settlement issue that we are talking about. And settlement questions that abound all across this country. I think that is the precedent that I want to ask about.

Ms. HART. Yes. The Department cannot support the unilateral altering of agreements such as that.

Mr. GRIJALVA. There is—no, that should do it. Thank you, Mr. Chairman.

Mr. YOUNG. I thank the gentleman and his passion for his position on this. My concern is when Moe Udall and I, and Moe Udall was sitting right here, and I was sitting right there. And we definitely always made the agreement in IGRA that there would have to be an agreement from the Governor and a legislative body. Otherwise there would be no gambling. And that is my biggest concern with this whole thing.

I got a letter from a Governor, I got a letter from everybody, and we thought this was a way to make everybody work together. And basically it worked all this time. This is the first time, I think, since IGRA where we have had a leap-frogging aspect. And I go back to the deal about Tucson; I am all for it, a casino in Tucson. I think it is going to be a good idea.

But that bothers me when we are now, the Department is saying we don't need to have that compact doesn't mean anything, and the State doesn't play a role in it, I think there is something wrong. Because that was never our intent. And I challenge anybody to dispute me. Go back and look up the report and the language we had

when we passed IGRA. By the way, we were criticized for it at that time, too.

But anyway, let me see, who is up next? Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman. I was teasing Mr. Franks because he is now the Ranking Member of our delegation.

Is it Ms. Hart?

Ms. HART. Yes.

Mr. SCHWEIKERT. Ms. Hart, how long have you been in this area of specialization?

Ms. HART. Almost 20 years.

Mr. SCHWEIKERT. Twenty years. Have you ever wanted to just go beat up your career counselor?

[Laughter.]

Mr. SCHWEIKERT. Oh, come on, that was funny.

[Laughter.]

Mr. SCHWEIKERT. Do you remember, were you covering Arizona at the time, we will call it the original compacts, 1993? Yes, I think that was when we did the first set.

Ms. HART. That is right. Yes, yes, I would have been.

Mr. SCHWEIKERT. And this is partially also for the members of the Committee. Then I believe actually sort of the update of that was, what, 2002?

Ms. HART. Yes.

Mr. SCHWEIKERT. And that was actually done through an initiative process, I believe.

Ms. HART. That is correct.

Mr. SCHWEIKERT. The gambling tribes, if that is the proper way to phrase it, got together and actually put something on the ballot. And if I also remember at that time there was also a competing initiative, and this is me reaching my brain back a little bit, for some of the horse-racing they had also wanted. You know, racinos. And the public voted that one down.

Ms. HART. Yes.

Mr. SCHWEIKERT. Is my memory serving me OK?

Ms. HART. That seems correct, yes.

Mr. SCHWEIKERT. Did you pay attention to sort of that language that was part of that initiative in 2002?

Ms. HART. Well, when the Tribal-State Compact comes into the Gaming Office, we are bound to look at what is in front of us. Any agreements—the Indian Gaming Regulatory Act clearly states that Class III gaming is regulated by a Tribal-State Compact. So that agreement that is in front of us is what we review.

Thee are very limited circumstances in which we can disapprove a compact. So we look at the terms of the compact that is in front of us.

Mr. SCHWEIKERT. OK. You have actually just hit a very interesting point, and I want to make sure. So in many ways you are sort of an overseer, but ultimately this really is an agreement between the State and the tribal communities.

Ms. HART. That is correct.

Mr. SCHWEIKERT. I mean, that is who is actually making this deal. You are sort of the, you know, the sort of stamp of approval on top of that.

Ms. HART. Yes, to make sure it is legal.

Mr. SCHWEIKERT. Because my memory of that initiative in 2002, which the public all over the State voted for, and actually voted for overwhelmingly, was that—and literally, I can actually picture these gigantic brochures. They must have spent a fortune with their printers. Talking about there would be seven casinos within the, you know, around the Maricopa County urban area. But with it also that there would be a transfer of rights to certain gaming machines from rural tribes that did not have urban populations transferred over to those. Does that seem familiar?

Ms. HART. Yes.

Mr. SCHWEIKERT. Doesn't this cause some mechanical issues, if that is the agreement between the State and the gaming tribes? That A, we told the public seven, and this I think would blow that number up. But you also, what would happen to these contracts between the tribes and the State if that racino, you know, if the dog track or horse track had gone through? You know, if all of a sudden I woke up tomorrow and there was Class III gaming at the local horse-racing track.

Ms. HART. The exclusivity provisions in the compact would be violated.

Mr. SCHWEIKERT. And with the violation of that, then boom, functionally the tribal communities would have the choice just to put in whatever they chose. I mean, race books, anything, because at that point we have blown up the Class III restrictions?

Ms. HART. Well, it would have to be legal in the State.

Mr. SCHWEIKERT. OK. But isn't the definition of legal in the State that a class of gaming, not actually the individual activity, but it is a class definition. This is something that used to drive me nuts getting my head around, that a lottery, a State lottery is, what, a Class II?

Ms. HART. Yes.

Mr. SCHWEIKERT. And yet, now slot machines, are they Class II or Class III?

Ms. HART. Class III.

Mr. SCHWEIKERT. Class III. So if I had slot machines at a horse track, then I can have all types of Class III. I mean, it would blow up in everything within Class III. Is there anything above Class III?

Ms. HART. No.

Mr. SCHWEIKERT. OK, so it is everything.

Ms. HART. Right.

Mr. SCHWEIKERT. And that sort of makes that circle back around, that the public, statewide, had a vote. We were promised seven in the urban area; this blows that up. And my great fear back again comes, that if this does blow up and we end up having that initiative back on the ballot again, where, for money for the State budget or whatever the excuse is, they try to put, you know the cascade. It blows it all up.

Thank you, Mr. Chairman, for tolerating me.

Mr. YOUNG. Do you have a question, Mr. Franks? We want to thank the witness. And remember to go down and tell your bosses don't do that to me again. And I am going to have them in front of me if I have to subpoena them, that is what I am going to do. It is not fair to you, Ms. Hart, believe me.

Ms. HART. Thank you.

Mr. YOUNG. We will call the next panel: the Hon. Diane Enos, Salt River Pima-Maricopa Indian Community; the Hon. Arlen Quetawki, Governor of the Pueblo of Zuni; the Hon. Ned Norris, Chairman of the TO Nation; Mr. Eric Bistrow, Chief Deputy, Office of the Arizona Attorney General; and the Hon. Robert Barrett, Mayor of the City of Peoria, Arizona. Please take your seats.

Diane, honorable President, you are up first. Make sure your microphone is on, and take your time. And I think you all know the rules: five minutes, and I will maybe be a little lax, but not too lax.

Oh, I have to say happy birthday, too. I probably should sing you happy birthday, but someone might say I was prejudiced that way, so I better not. So happy birthday.

STATEMENT OF THE HONORABLE DIANE ENOS, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Ms. ENOS. Thank you. I am trying to get comfortable here. Thank you, Chairman. I would ask that my written testimony be included as part of the record in these proceedings.

Today I am joined by two members of our community council: Councilwoman Diana Chavez and Councilman Tom Largo. In addition I would like to also recognize Chairwoman Louise Benson of the Hualapai Tribe in northern Arizona, Councilman Irwin Twist of the Cocopah Tribe in southwestern Arizona, Councilman Paul Russell with the Fort McDowell Yavapai Nation, Councilman Barney Enos of the Gila River Indian Community.

These tribal leaders have traveled long distances from the corners of Arizona to show support for the legislation which will prevent a serious injustice to their communities and the voters of Arizona. A dozen tribes formally oppose these ill-advised efforts by the Tohono O'odham Nation. Not one Arizona tribe has voiced support for Tohono's efforts to establish an off-reservation casino in the aboriginal territory of my community.

First, aboriginal territory. Tohono's reservation, the second-largest tribal homeland in the United States, is in southern Arizona along the border. I included in my written testimony a map that shows the aboriginal tribal areas in Arizona, as recognized by the Indian Claims Commission.

As the map shows, the City of Glendale, where Tohono is seeking to develop their casino, is clearly in the aboriginal lands of the Pima-Maricopa, my community, not the Papago who comprise Tohono.

Second, broken promises are key. Our current Arizona Gaming Compact is the result of a united effort by tribes in the 1999 to 2002 period to negotiate with the State to revise and extend the prior compacts. I had the privilege of being an elected tribal leader then, as well, and Salt River was involved in the entire process.

My views today are based on my personal experience and discussions with other tribes who were also involved during the compact negotiations, and the subsequent initiative process that was required to approve the compact. We all agree on the following key points.

Number one. All of the 17 tribes negotiating with the State, including Tohono, bound ourselves together by written agreement to support each other and the positions taken as a unified group. We promised each other that if we could not support the common positions taken by the group, or acted inconsistently with those common positions, we would inform the others, so that they could take actions accordingly.

Number two. We all agreed, in response to an initial demand from the State, that there would be a reduction in the total number of casinos in the Phoenix metro area from 11 to seven; and that there would be no new casinos in that area. This was a deal-breaker for the State from the very beginning of negotiations.

We, along with Tohono, then made the same promise to the voters of Arizona in written materials that I have included as part of my written testimony. What is up there is the agreement in principle that was signed by all of the tribes, including Tohono.

The promise that we made to the voters of Arizona and written materials I have also included as part of my written testimony. Tohono was a major contributor to that campaign, and was involved in its direction and execution throughout. That is my recollection and that of other tribal leaders with whom I have spoken, some of whom are here with me today.

I need to be crystal-clear on this one point. We believed then, and we believe now, that we had a clear agreement with Tohono that there would be no new casinos in Phoenix. Whatever else you take away from my testimony today, I hope that you understand how we view that very fundamental question.

Now, I have heard the current Chairman of Tohono say in response that the words of the voter materials and of the Governor and our own are just that, words. He points to the papers and says, where in this document have we made that promise, or, where has Tohono signed an agreement, a document that says that. This saddens and disturbs us, but it is also what motivates us to be here today. Because in our tribal cultures, one's word ought to be enough. Tribes should not have to worry about whether we can trust the word of another tribal government. Yet that is what we have today.

Tohono is now seeking to use a 1986 Federal law to bypass the promise it has made to Arizona voters and tribes. Tohono is manipulating the 1986 law to avoid the prohibition against off-reservation gaming, to develop a casino in Glendale, in direct violation of the promise that there would be no new casinos in the Phoenix metropolitan area. This is wrong, unfair, and Congress should stop it.

The Gila Bend Act of 1986 was an honorable effort by Congress to provide compensation and replacement lands to the people of the San Lucy District of the Tohono O'odham Nation. But it was not a promise that Tohono could operate casinos on that land, nor could it have been, as it was passed well before the Indian Gaming Regulatory Act of 1988.

The fact that they are here today arguing for the right to build a casino in Phoenix, in direct violation of their word to us and all the other affected tribes in Arizona, and the voters in Arizona, is

perhaps the most compelling reason I can offer as to why this legislation is absolutely necessary.

Thank you for the opportunity to testify. I will be happy to answer any questions the panel may have.

[The prepared statement of Ms. Enos follows:]

Statement of Diane Enos, President,
Salt River Pima-Maricopa Indian Community

Executive Summary

The Salt River Pima Maricopa Indian Community ("Community") would like to thank Rep. Trent Franks (R–2nd/AZ) along with Reps. Paul Gosar (R–1st/AZ), Ben Quayle (R–3rd/AZ), David Schweikert (R–5th/AZ), and Jeff Flake (R–6th/AZ) for sponsoring this important legislation, H.R. 2938, the "Gila Bend Indian Reservation Land Replacement Clarification Act." We also want to thank Representative Dale Kildee, long a champion of tribal rights, for his co-sponsorship of this bill.

This bill will prevent gaming on lands acquired by the Tohono O'odham Nation ("Nation") in Arizona pursuant to the Gila Bend Indian Reservation Lands Replacement Act in 1986 (P.L. 99–503, 100 Stat. 1798) ("Gila Bend Act") and protect the current Indian gaming structure in Arizona.

H.R. 2938 is necessitated by the Nation's efforts to manipulate the Gila Bend Act in a manner that would directly violate their commitments made in the current Arizona compacts. The Nation is currently trying to utilize the 1986 Gila Bend Act to acquire lands more than 100 miles from its existing reservation, in our tribe's aboriginal lands,[1] to develop a casino in the Phoenix metropolitan area.

Congress passed the Gila Bend Act in 1986. The purpose of this law was to allow the Nation to replace up to 9,880 acres of primarily agricultural lands that were being intermittently flooded due to Federal dam projects. These lands were located in southern Arizona near the existing reservation of the Nation. The law provided $30 million to the Nation to purchase replacement lands.

While there is no mention of gaming in this law, two years later Congress passed the Indian Gaming Regulatory Act (25 U.S.C. 2701, *et seq.*) ("IGRA"), which specifically restricted the ability of Indian tribes to conduct gaming activities on lands acquired after October 1988, except in certain very narrow circumstances.

The Nation is now asking that the Secretary of the Interior take a fifty-three acre portion of this land near Glendale, Arizona into trust status for the purpose of developing a Las Vegas-style casino on it. The Nation argues that the Gila Bend Act mandates the Secretary to do so, and to do so without any consultation with the local communities, the State, or other American Indian tribes in Arizona despite the prohibitions in IGRA and the promises made by the Nation during the Compact negotiations and the Prop 202 process.

While the Secretary of the Interior has not yet opined on whether these lands would be eligible for gaming, he has issued a decision to take the lands into trust status. A federal district court has issued an injunction prohibiting the Secretary from doing so until the appeals from that decision have run. The Gila Bend Act was passed before IGRA and was not intended to allow for gaming on these lands. Congressman Franks' bill would clarify Congress' intent.

In addition to seeking to sidestep the limits of the Indian Gaming Regulatory Act, the efforts of the Nation also jeopardize a well-balanced system of gaming in Arizona, that the Nation helped to construct. The State of Arizona is unique in that it has a system of gaming that was jointly negotiated amongst the tribes and the State, and then approved by the citizens of Arizona in a state-wide referendum. The Arizona system prohibits any additional casinos in the Phoenix metropolitan area, but allows the Nation to develop a fourth casino (the Nation currently operates three successful casinos) in the Tucson metropolitan area, where the Nation has historically been located.

The Nation financially and publicly supported the development of the current gaming system in Arizona.[2] However, unbeknownst to the other tribes, the State

[1] The map attached as Exhibit 1 clearly demonstrates that the lands in Glendale are the aboriginal lands of the Pima Maricopa people, not the Papago (who are now represented by the Nation).

[2] The Tohono O'odham Nation was a major contributor to the entire referendum process, contributing over $1.8 million, and participating in the direction and implementation of the campaign throughout. One particularly telling example of the promise that they were endorsing in

Continued

and the voters of Arizona, at the same time that it was advertising to the voters and other tribes that there would be no new casinos in the Phoenix area, the Nation was entering into a confidential agreement with a realtor to buy land in the Phoenix area for a casino.

Twelve American Indian tribes in Arizona oppose the efforts of the Nation to develop a casino in the Phoenix metropolitan area; as does the Governor of Arizona and the Cities of Glendale, Phoenix, Scottsdale and others, and no other Arizona Indian tribe has indicated support of the casino development.

Congress did not intend this type of situation to occur when it passed the Gila Bend Act. H.R. 2938 would bring some common sense to this situation and clarify that lands purchases through the Gila Bend Act cannot be used for gaming, confirming the promises made by the Nation in 2002 to the tribes, to the State and the voters of Arizona. H.R. 2938 will not make any amendments to the Indian Gaming Regulatory Act. The bill would not take any lands away from the Nation, nor will it prevent any lands from going into trust status. The bill will only prohibit the Nation from conducting gaming on lands acquired pursuant to the Gila Bend Indian Reservation Lands Replacement Act of 1986 which is critical in order to be able to protect the entire Arizona Indian gaming structure.

I. H.R. 2938

As its title makes clear H.R. 2938 clarifies the Gila Bend Act to expressly prohibit Class II or Class III gaming, as defined in IGRA, on lands placed into trust pursuant to the Gila Bend Act. H.R. 2938 is a simple one sentence amendment that clarifies that the Gila Bend Act was not intended to authorize gaming on newly acquired lands.

H.R. 2938 does not jeopardize tribal sovereignty nor create negative precedent for Indian Country. H.R. 2938 simply seeks to clarify that Las Vegas-style gaming is not permitted on land acquired pursuant to the Gila Bend Act. In fact, this type of legislative restriction is common in Indian Country. Congress has included various restrictions in legislation involving Indian land, particularly gaming. For instance, it is not unusual for Congress to revisit existing statutes to clarify that gaming is prohibited, so long as the legislation is narrowly tailored. [3] Similarly, legislative bills consistently grant federal recognition to tribes or grant land-into-trust sta-

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the campaign materials for the Compact is attached as Exhibit 2. In it, on page 5, appears the following text:

"Q. DOES PROP 202 LIMIT THE NUMBER OF TRIBAL CASINOS IN ARIZONA? "A. YES, IN FACT, PROP 202 REDUCES THE NUMBER OF AUTHORIZED GAMING FACILITIES ON TRIBAL LAND, AND LIMITS THE NUMBER AND PROXIMITY OF FACILITIES EACH TRIBE MAY OPERATE. UNDER PROP 202, **THERE WILL BE NO NEW ADDITIONAL FACILITIES AUTHORIZED IN PHOENIX, AND ONLY ONE ADDITIONAL FACILITY PERMITTED IN TUCSON."**

[3] *See e.g.,* the Rhode Island Indian Claims Settlement Act, settling the Narrangansett's land claims, was enacted in 1978 without a provision regarding gaming. 25 U.S.C. § 1701 *et seq.* Congress subsequently amended the Rhode Island Indian Claims Settlement in 1996 to explicitly prohibit gaming pursuant to IGRA. *See* 25 U.S.C. § 1708(b) ("For purposes of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), settlement lands shall not be treated as Indian lands"). S*ee also,* the Colorado River Indian Reservation Boundary Correction Act, to clarify or rectify the boundary of the Tribe's reservation while also including a provision prohibiting gaming ("Land taken into trust under this Act shall neither be considered to have been taken into trust for gaming nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)"), Pub. L. 109–47 (Aug. 2, 2005); Congress passed legislation to waive application of the Indian Self-Determination and Education Assistance Act to a parcel of land that had been deeded to the Siletz Tribe and Grand Ronde Tribe in 2002 but also included a gaming prohibition provision ("Class II gaming and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be conducted on the parcel described in subsection (a)") Pub. L. 110–78 (Aug. 13, 2007); Congress clarified the Mashantucket Pequot Settlement Fund, 25 U.S.C. § 1757a to provide for extension of leases of the Tribe's land but provided that "No entity may conduct any gaming activity (within the meaning of section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) pursuant to a claim of inherent authority or any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq) and any regulations promulgated by the Secretary of the Interior or the National Indian Gaming Commission pursuant to that Act) on any land that is leased with an option to renew the lease in accordance with this section."), Pub. L. 110–228 (May 8, 2008); Congress passed the Indian Pueblo Cultural Center Clarification Act which amended Public Law 95–232 to repeal the restriction on treating certain lands held in trust for the Indian Pueblos as Indian Country with the explicit clarification that although it was Indian Country it could not be used for gaming ("Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b)."") Pub. L. 111–354 (Jan. 4, 2011).

tus with an explicit provision prohibiting gaming pursuant to IGRA. [4] This is a proper and necessary role for Congress.

This continues to be a consistent practice of Congress. Recently, Congressman Grijalva introduced the Cocopah Lands Act (H.R. 1991), a bill to transfer land in trust to the Cocopah Tribe and included a provision restricting gaming. ("Land taken intro trust for the benefit of the Tribe under this Act shall not be used for gaming under the Indian Gaming Regulatory Act"). *See* Exhibit 3.

The Community supports H.R. 2938 because it is narrow in scope, does not impact tribal sovereignty and is the simplest solution to this current threat to Indian gaming in Arizona. Instead, this legislation merely makes express what had been the common understanding of the rights and remedies available under the Gila Bend Act.

II. The Gila Bend Act Did Not Create a Right to Conduct Gaming

In 1950, Congress enacted the Flood Control Act, Pub. L. No. 81–516, 64 Stat. 163, authorizing the construction of the Painted Rock Dam in central Arizona. The Painted Rock Dam was built ten miles downstream from the Nation's Gila Bend Reservation, which was held in trust by the United States for the benefit of the Nation. H.R. Rep. No. 99 851 at 4 (1986). Before completion of the dam, the Army Corps of Engineers (the "Corps") repeatedly attempted to obtain a flowage easement over the lands (both Indian trust lands and non-Indian fee lands) that would be intermittently flooded as a result of the dam's construction. Id. at 5. Because the Corps could not reach an agreement with the Nation or other non-Indian landowners, it eventually instituted condemnation proceedings in federal district court. Id. Through those proceedings, the Corps obtained a condemnation of fee title for the non-Indian lands and a flowage easement for the affected Indian and non-Indian lands pursuant to a 1964 federal court decree.[5] Id.

The flowage easement for Painted Rock Dam did not "take" the Gila Bend Reservation from the Nation but rather authorized intermittent flooding of approximately 7,700 acres of the Nation's Gila Bend Reservation, for which the Corps paid $130,000 in compensation to the Nation. Id. In the late 1970s and early 1980s, high rainfall caused repeated flooding upstream of Painted Rock Dam, "each time resulting in a large standing body of water." Id. "[T]he floodwaters destroyed a 750-acre farm that had been developed at tribal expense and precluded any economic use of reservation lands." Id. at 5–6. In 1981, the Nation petitioned Congress "for a new reservation on lands in the public domain which would be suitable for agriculture." Id. at 6.

We understand the inexcusable damage done to the cemetery and the houses in the San Lucy village and we believe that Congress rightfully enacted the Gila Bend Act in 1986 to address the unexpected flooding and its effects. To be certain, how-

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[4] *See e.g.*, Hoh Indian Tribe Safe Homelands Act, Pub.L. 111–323 (Dec. 22, 2011), transferred federal and non-federal land to the Hoh Indian Tribe. The legislation specifically provided that "[t]he Tribe may not conduct on any land taken into trust pursuant to this Act any gaming activities—(1) as a matter of claimed inherent authority; or (2) under any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) (including any regulations promulgated by the Secretary of the National Indian Gaming Commission pursuant to that Act)); the Omnibus Public Land Management Act of 2009 included a land transfer to the Washoe Tribe but restricted the use of land for gaming: "Land taken into trust under paragraph (1) shall not be eligible, or considered to have been taken into trust, for class II gaming or class III gaming (as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. 2703)) Pub. L. 111–11, 123 Stat. 1115 (Mar. 30, 2009); Pechanga Band of Luiseno Mission Indians Land Transfer Act of 2007, Pub. L. 110–383 (Oct. 10, 2008) transferred federal land in trust to the Pechanga Reservation but prohibited gaming such that "[t]he Pechanga Band of Luiseno Mission Indians may not conduct, on any land acquired by the Pechanga Band of Luiseno Mission Indians pursuant to this Act, gaming activities or activities conducted in conjunction with the operation of a casino—(A) as a matter of claimed inherent authority; or (B) under any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) (including any regulations promulgated by the Secretary or the National Indian Gaming Commission under that Act))"; Albuquerque Indian School Act, Pub.L. 110–453 (Dec. 2, 2008) that authorized the Department of Interior to take land into trust for the benefit of nineteen (19) pueblos and included a prohibition on gaming: "No gaming activity (within the meaning of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)) shall be carried out on land taken into trust under section 103(a)"; Congress passed a bill to provide for lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe and included a gaming restriction: "Lands taken into trust pursuant to subsection (a) shall not be considered to have been taken into trust for, and shall not be eligible for, class II gaming or class III gaming (as those terms are used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.))", Pub. L. 109–421 (Dec. 20, 2006).

[5] Many tribes across the Nation, including various Missouri River valley tribes impacted by the Pick-Sloan project, and even the Seneca Nation of Indians in New York impacted by the Kinzua Dam have been the subject of such proceedings.

ever, the Gila Bend Reservation was not inundated or otherwise rendered inhabitable. The most predominant effect was the wide spread growth of tamarisks (salt cedars) on the Nation's reservation lands, which are an invasive species that is difficult to destroy and makes agricultural development extremely difficult.

Thus, the Gila Bend Act gave the Nation the means to replace 9,880 acres with 9,880 acres of other land. It provided that if the Nation assigned the entire reservation to the United States, it would receive in return funds to be used for the purchase of replacement land and for other related purposes. Specifically, Section 4(a) authorized payment of $30 million to the Nation, plus interest from the date of enactment, if it agreed to assign "to the United States all right, title, and interest of the Tribe in nine thousand eight hundred and eighty acres of land within the Gila Bend Indian Reservation."

In other words, the Gila Bend Act authorized an acre for acre exchange of land funded by the federal government in order to put the Nation back into the position it was before Painted Rock Dam was constructed—in possession of land suitable for agricultural development. Thus, the Nation made such an assignment shortly after enactment and received the statutory funds in return.

The Nation seeks to justify the operation of gaming in the Phoenix metro area on the ground that the Gila Bend Act qualifies as a "settlement of a land claim" within the meaning of IGRA. But a "land claim" is a claim to land, rather than a claim for damage to land. To read "land claim" to mean a claim to title or possession is faithful to historical congressional and judicial usage, to the statutory text of IGRA, and to IGRA's implementing regulations. In contrast, to read "land claim" as the Nation suggests defies the statutory text of IGRA.

The regulations define a "land claim" as one that (i) arises under the U.S. Constitution, federal common law, federal statute or treaty; (ii) accrued on or before October 17, 1988 and (iii) involves "any claim by a tribe concerning the impairment of title or other real property interest or loss of possession." The regulations make clear that the term "land claim" for purposes of Section 20 relates to claims concerning the title of the land or loss of possession. The term "land claim" does not encompass all claims relating to land, such as ones for injury to the land.

A "land claim" as that term has been used by Congress for over a hundred years is a claim to land—a claim to title. Every occurrence of the term "land claim" located in federal statutes confirms this interpretation. The prototypical Indian land claims when Congress enacted IGRA were claims such as those made by Eastern tribes pursuant to the Indian Nonintercourse Act. See, title 25, Chapter 19, United States Code. In each instance, a state or other non-Indian entity acquired title and possession of the Indian land in contravention of federal law.

As a result, the Indian tribes brought actions for the immediate possession of the land and ejectment of the non-Indian occupants based upon the tribe's superior title to the land as recognized and guaranteed by federal law. Thus, the hallmark of an Indian land claim is one in which an Indian tribe claims a right to a parcel of land, either by title or possession, against an adverse claim of title. This Congress has enacted at least thirteen (13) "land claim" settlements, each of which arose out of claims filed or asserted by Indian tribes alleging the illegal dispossession of their land and a possessory interest based upon superior title. *See* 25 U.S.C. Chapter 19, §§ 1701–1778h.

The Gila Bend Act did not settle any "land claim" and mentions no such claim. Rather, it settled "any and all claims of water rights or injuries to land or water rights (including rights to both surface and ground water)." Gila Bend Indian Reservation Lands Replacement Act, Pub. L. No. 99–503, 100 Stat. 1798, 9(a) (1996). The Nation has proffered a number of self-serving assertions of viable "land claims" allegedly settled by the Gila Bend Act, none of which hold up when analyzed under well settled law.

III. H.R. 2938 Recognizes and Supports Tribal Sovereignty

The Community, along with the 12 other tribes in support of H.R. 2938, know firsthand the importance of tribal sovereignty. As federally recognized tribes, we fight on a daily basis to protect tribal sovereignty and provide for our people. We would not support a bill that jeopardizes tribal sovereignty. Rather, we pride ourselves on working with our brethren on issues of common concern to Arizona tribes because it strengthens our collective sovereignty and helps us fulfill our responsibilities to our individual tribal communities.

There is no better example of this united and collective action among Arizona tribes than the 17 tribe coalition that jointly negotiated and worked to pass by voter referendum Proposition 202—the 2002 Tribal—State compacts between Arizona gaming tribes, including the Nation, and the State of Arizona. Ironically, however, it is Tohono O'odham's unilateral breach of this very Compact and the spirit of unity

that has bound each tribe to the commitments made in those agreements that now threatens tribal sovereignty and has compelled the Community and 11 other Arizona tribes to publicly oppose Tohono O'odham's efforts.

We are here today in support of H.R. 2938 because in our view, H.R. 2938 explicitly recognizes and respects tribal sovereignty by upholding the commitments that all of the 17 tribes made during the compact process and that were memorialized through passage of Proposition 202.

Here, H.R. 2938 is narrowly tailored to maintain the status quo and sustain the carefully negotiated gaming structure, voted on by the citizens of Arizona. Without H.R. 2938, Tohono O'odham will proceed on its path to circumvent existing gaming restriction, both under Federal and State law, conduct gaming far from their existing reservation, and most importantly jeopardize the other Arizona tribes' existing rights under Federal law that we all share. As sovereign nations, we cannot simply stand by and watch someone, albeit another Arizona tribe, threaten our gaming rights and unravel the comprehensive and inter-connected gaming structure in Arizona. Accordingly, we urge passage of H.R. 2938 to uphold tribal sovereignty.

IV. Arizona Compact

We and many other Arizona tribes believe that the existing tribal-state gaming compacts are the model in the Indian gaming industry. It is regulated at all levels of government (tribal, state, and federal), is limited in both the number of gaming devices and locations, benefits both gaming and non-gaming tribes alike, benefits local municipalities throughout the state, and is beneficial to the State of Arizona. But most importantly, the citizens of Arizona benefit because the tribal-state gaming compacts were the direct result of a voter approved ballot initiative in 2002.

Today, the proposed casino development project by the Nation runs contrary to what the voters approved in 2002 and threatens the existing tribal-state gaming compacts. For example, prior to the passage of the voter approved ballot initiative ("Prop 202") which culminated in the existing Tribal-State gaming compacts, tribal leaders held extensive negotiations on an acceptable framework for all tribes. Importantly, 16 tribal leaders, including the Nation, signed an Agreement in Principle ("AIP") to make a good faith effort to maintain a cooperative relationship as to gaming matters and compact renegotiation. *See* Exhibit 4.

Specifically, the AIP stated that tribal leaders would make "Good Faith" efforts to share among themselves the details of compact renegotiations with the State of Arizona. Further, tribal leaders agreed to make "Good Faith" efforts to develop and maintain consistent positions and to notify other tribal leaders if they believed they could not abide by the AIP.

We negotiated in good faith with all Arizona tribes and the Governor of Arizona to craft a tribal-state gaming compact that preserved tribal exclusivity for casino gaming, allowed for larger casinos and machine allotments with the ability to expand machine allotments through transfer agreements with rural tribes, and limited the number of casinos in the Phoenix metropolitan area. In order to reach a deal with the Governor of Arizona all tribes, including the Nation, had to agree that no more than seven casinos could be located in the Phoenix metropolitan area.

This meant that the Salt River Pima-Maricopa Indian Community and the three other Phoenix Metro tribes (Ak-Chin, Gila River & Fort McDowell) each had to give up their rights to one casino. The Tohono O'odham tribe was aware of this concession on the part of other tribes and was fully aware that this was a key deal point for the State of Arizona that needed to be made if negotiations were to move forward.

However, it is clear the Nation began actively seeking to purchase land in the Phoenix area for the sole purpose of establishing a casino, prior to the ratification of the tribal-state compacts. As a result, many Arizona tribes have opposed the actions of the Nation. Indeed, Exhibit 5, a chronology of events from the time of enactment of the original land settlement further clarify the intent of Congress, the State of Arizona and Indian tribes throughout the state.

Tellingly Chairman Norris has not denied, because he could not, that the 17 tribe coalition had made promises directly to the Arizona voters that there would be no more casinos in the Phoenix metropolitan area. When confronted his public response to some of these tribes was, "those are just words on a publicity pamphlet." [6]

Arizona Tribes overwhelmingly agree that the collaborative approach to crafting the current tribal-state compact has been a great benefit to tribal communities, local

[6] *See also* Exhibit 6, in which the Nation admits in documents filed in federal district court that "various parties" viewed the statements made in the voter materials and otherwise as a commitment that there would be no new gaming sites in the Phoenix metropolitan area. (Admission 40, pp. 6–7).

communities—such as our neighbors, the Cities of Tempe and Scottsdale, for the State, and the people of Arizona.

However, not then and certainly not now, did we expect to be here today to say that one of our sister tribes did not act in "good faith". However, the record is clear there were ongoing efforts by the Nation government to purchase land, have it taken into trust status and develop a casino.

It is not an easy thing to stand here and talk about a lack of "good faith", and we do so reluctantly. However, we act today so that in future years, we will not have to look back and say to all, that "we should have said something."

V. The Nation already has a thriving gaming enterprise with three operating casinos.

The Nation already has very successful gaming enterprise. The Nation operates two casinos in the Tucson metropolitan area and an additional casino in Why, Arizona. The success of the Nation's gaming enterprise was recently highlighted in Indian Country Today. *See* Exhibit 7. Additionally, under the current gaming Compact, the Nation is allowed to develop a fourth casino on their existing reservation lands, including in the Tucson metropolitan area. H.R. 2938 would not impact the Tribe's existing 3 casinos or impact its ability to develop a fourth casino on its existing reservation.

VI. Congressional action is necessary

The Nation's secretive and deceptive actions have resulted in litigation in the federal courts from the District of Columbia to the State of Arizona and up to the Court of Appeals for the Ninth Circuit. Significantly, however, not one of these cases has dealt with the Nation's claim that the Glendale land is the "settlement of a land claim".

Why? Because the Nation has manipulated the land-into-trust and gaming eligibility process in a calculated way to prevent the public and any other interested party from ever challenging their notion that the Gila Bend Act settled a land claim or that the Glendale parcel actually qualifies for Indian gaming. Definitive action by Congress is therefore necessary to resolve, once and for all, the intent of the Gila Bend Act and more importantly, preserve the deal that was struck in 2002.

Indeed, this Congress has often clarified—even retroactively—that certain land acquisition bills were never intended to be used for gaming, especially on lands far flung from existing reservation lands. Of course, the Nation prefers to keep things tied up in court while blaming everyone else for the state of uncertainty created by their unilateral actions. More problematic, however, is the Nation's public relations campaign that is premised on taking procedural orders from the various courts and implying that the law sanctions off-reservation urban gaming in Arizona. Nothing could be farther from the truth. Only Congress has the power to put an end to the Nation's costly courtroom tactics.

While the Arizona tribal community, the state, and the co-sponsors of the bill would welcome a resolution that ensures that there would be no casino gaming in Glendale, or other attempts to game on lands removed from Tohono O'odham's current reservation in the Tucson area, one cannot simply turn a blind eye to the fact that Tohono O'odham's current proposal to game in Glendale is illegal and violates the agreement that Tohono O'odham made with other Arizona tribes, the state, and with Arizona voters in 2002. It is therefore particularly ironic that the Nation claims the trust responsibility would be violated by this measure. In reality, the trust responsibility is a further reason to enact H.R. 2938—without it, the self-interested economic desires of one tribe would be advanced to the detriment of every other gaming tribe in Arizona.

Furthermore, because courts often struggle with interpreting congressional intent and will often invite Congress to clarify a statute that has become controversial, Congress is uniquely situated to clarify the Gila Bend Act that is being misused by Tohono O'odham and to address an issue that the administration seems reluctant to address. In doing so, Congress can ensure that Tohono O'odham will not be allowed to develop a casino in Glendale, a result never envisioned by Congress in the first instance, and which the Nation explicitly promised it would not do in the Compact and Prop 202 process.[7]

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[7] Contrary to the Nation's statements that this legislation is being prompted by its victories in court, the Nation has either lost or is fighting an appeal on major issues. For example, the federal district court issued an injunction against the United States prohibiting it from taking the land into trust until the appeals on lower court decisions have been heard and decided. In June, a court rejected the Nation's attempt to keep other Arizona tribes out of a legal action aimed at protecting the integrity of the gaming compact, and the court rejected Tohono O'odham's attempt to dismiss the legal counts of that suit. In August, the NIGC disapproved

The Nation has manipulated the regulatory review process in a thus far successful attempt to shield the ultimate question—gaming eligibility—from judicial review. If the bill fails and the process continues, there is a strong possibility that the Department of Interior has been maneuvered into a position where it will be forced to render an opinion on gaming eligibility totally separate from any vehicle that would give interested parties the opportunity to challenge that decision. Thus Congress must act.

There are also important practical considerations that compel Congressional action now. Among them, taxpayers and other tribes in Arizona should not have to wait and continue to have to spend time and money to fight against the unfair and dubious actions by the Nation. The result is that this bill would clarify what everyone except the Nation understands, that the Gila Bend Act cannot be used to shoehorn an off-reservation casino into Glendale or any other location not on its existing reservation.

While the Arizona tribes who support H.R. 2938 do not want to have to be critical of the Nation's conduct here, it is hard to avoid the fact that it has repeatedly thwarted the normal process for obtaining federal approval of Indian gaming by trying to get federal regulators at the National Indian Gaming Commission to approve the Tribe's Glendale plan as part of its existing gaming ordinance and by engineering procedural moves at Interior to avoid review there.

VII. Summary

The Salt River Pima Maricopa Indian Community, and the other tribes from Arizona that are present today, urge Congress to pass H.R. 2938. It is needed to clarify the original Gila Bend act so that any land purchased since its enactment is not eligible for Class II or Class III gaming pursuant to the Indian Gaming Regulatory Act (IGRA). The clarification does not interfere with the Nation's desire to have land taken into trust. It maintains the status quo in Arizona and does not adversely affect any tribe. Without this bill, the other Arizona Tribes may suffer because the current gaming compacts could be nullified. This bill does not prevent the Nation from acquiring the land in trust and establishing other economic development. We support this legislation.

Mr. YOUNG. Thank you, Madame President. The Hon. Arlen Quetawki, Governor of the Pueblo of Zuni. You are up.

STATEMENT OF THE HONORABLE ARLEN P. QUETAWKI, SR., GOVERNOR, PUEBLO OF ZUNI

Mr. QUETAWKI. Thank you, Chairman. It is great to have this opportunity to testify on behalf of the Pueblo of Zuni. Chairman and Ranking Member, thank you for the opportunity to address the Subcommittee.

I am Governor Arlen P. Quetawki, Sr. I represent the Pueblo of Zuni and its 11,000 members. Our lands are located in the States of Arizona and New Mexico. I am here today to speak about the Zuni Pueblo's views on a non-gaming tribe and the purpose of H.R. 2938.

We are a remote tribe, and we do not have a casino in Arizona or New Mexico. However, under our gaming compact we have with Arizona, we are able to transfer our slot machine allocation, under lease agreements, to other tribes located in better markets. This was a negotiated compromise reached among Arizona tribes and the State through the current gaming compacts.

In return for agreeing to limits on gaming in the Phoenix and Tucson areas, and for giving up off-reservation gaming near these markets, we get to share in gaming revenues generated through transfer agreements.

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the Nation's request for approval of an amendment to its gaming ordinance, and, in September, a court ruled against the Nation's attempts to stop the discovery of salient facts about Tohono O'odham's purchases of land under the Gila Bend Act, including its use of a sham corporation.

As a remote tribe with limited economic opportunities, those funds have been essential. We use and rely on these revenues to support our limited government operations, and have dedicated some of these funds to reacquire aboriginal lands, and to fund a wellness center to treat diabetes.

Our concern with the proposed Glendale casino is that it would unravel the negotiated balance and benefits we achieved through the compacts. First of all, the casino will break the promise of all tribes made about limiting casino locations in securing the passage of Prop 202. The people of Arizona have shown they approve that the benefits of limited Indian gaming. We do not wish to backtrack on those commitments.

Second, we anticipate that the Glendale casino proposal will blur the distinction which the Arizona voters supported in their approval of Prop 202: that Class III gaming be limited to reservation lands. With a new casino established on new tribal lands in Glendale, non-Indian interests within the State will seek the right to conduct Class III gaming. Then tribes may lose their exclusive right to conduct Class III gaming. And if that occurs, and the compacts are void, the tribes in the urban markets will no longer need to make transfer payments to tribes like Zuni. Thus, this project comes at the expense of all other Arizona tribes.

We believe if this occurs, the Zuni Pueblo, like remote tribes, will suffer the most. For us, it will mean the loss of revenues provided to us under the compact, which we depend on.

Let me be clear. We support the Tohonos' efforts to exercise its rights to lands under the 1986 Act, but our concern is how that Act is being used, and the impacts it would cause for my tribe and other Arizona tribes. For that reason, we support the narrow scope of H.R. 2938, because we believe it addresses this problem.

The measure would not impact tribal sovereignty, and would not impact the Indian Gaming Regulatory Act. Instead, the law merely reflects the common understanding of the 1986 Act. Indeed, the bill would maintain the stability of the current compact structure; thus, securing sovereignty for all Arizona tribes.

As a tribe in both Arizona and New Mexico, we have seen firsthand the harm that can result when a tribe tries to obtain off-reservation land for gaming. In New Mexico, the Pueblo of Hamus's application to open a casino 300 miles away has brought unfavorable attention from Congress and the New Mexico Legislature. None of this attention has been positive, and the ill will it created among numerous stakeholders remains.

We think that the Department of the Interior made the right decision when it recently denied the application for that casino. We hope that relationships among tribes and other interested groups will be restored, and strengthen with the passage of time, just as we will see in Arizona, after this dispute is resolved.

As you examine this bill and the controversy in Arizona which it addresses, we ask that you recognize and support the benefits of Indian gaming in Arizona under the current compact structure. That structure works because it supports everyone, including my tribe. And if appropriate steps are not taken to maintain the stability of the compacts, ultimately my tribe and all tribes in Arizona will lose.

Thank you for allowing me to speak, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Quetawki follows:]

Statement of The Honorable Arlen Quetawki, Sr., Governor, Pueblo of Zuni

My name is Arlen Quetawki, Sr and I am the Governor of the Pueblo of Zuni which has approximately 11,000 members. Zuni lands are located in the States of Arizona and New Mexico.

My remarks concern H.R. 2938, "The Gila Bend Indian Reservation Lands Replacement Clarification Act," which the Zuni Pueblo supports for the reasons given below.

Zuni Pueblo is a rural tribe and does not have a casino in either our Arizona or New Mexico lands. Even though Zuni Pueblo is not a gaming tribe we are familiar with the Indian gaming issues that affect tribes in both states. From 1999 to 2002, Arizona tribes accomplished something unique in Indian country; they formed a coalition to jointly negotiate a compact with the Arizona Governor that balanced the interests of tribes in large markets, tribes in small markets, and tribes like Zuni that have no market due to that fact our lands in Arizona are very remote. Under the Tribal-State gaming compact, which was approved by the Arizona voters in 2002 when they voted to pass the Proposition 202 initiative, we are able to transfer our slot-machine allocation under lease agreements to other tribes that are located in better gaming markets.

This important compromise was a negotiated balance of interests reached among the Arizona tribes and with the State through the current Arizona gaming compacts. In return for our agreeing to limits on gaming in the Phoenix and Tucson metropolitan areas, and for giving up an opportunity to seek off-reservation gaming near these lucrative markets, we get to share in gaming revenues generated in these markets through transfer agreements.

As a result of that balance of interests, the Zuni Pueblo receives revenues from gaming tribes located closer to the metropolitan markets. As a rural tribe which struggles with severely limited economic opportunities, those funds have been essential. We use and rely upon those revenues to support our limited government operations. We have also dedicated a portion of those funds to develop the Pueblo's new Wellness Center, which will be instrumental in our fight against the growing rate of diabetes among our people. Lastly, those funds have enabled the Pueblo to reacquire aboriginal lands in Arizona which link our main reservation to the lands containing the sacred Zuni Heaven. We recognize that the stability and negotiated balance of the compact structure in Arizona was designed for the interests of all participating tribes, and we are very grateful for the revenues it has provided us.

Our concern with the proposed Glendale Casino by the Tohono O'odham Nation is that it would threaten to unravel the negotiated balance and benefits we achieved through our gaming compacts. First of all, the venture would break the promise all tribes made about limiting casino locations in securing the passage of Proposition 202, which authorized the State to enter into the gaming compacts which are currently in effect. The people of Arizona have repeatedly shown they approve the benefits of Indian gaming, but only if it is limited in scope, location and size. We do not wish to backtrack on those commitments.

Second, we anticipate that the Glendale Casino proposal would blur the distinction which the Arizona voters supported in their approval of Proposition 202, that Class III gaming be limited to what was recognized as Indian reservations in existence in 2002. With a new casino established on new tribal lands within a large non-Indian metropolitan area, other competing interests within the State will also seek the right to conduct Class III gaming. And, if the tribes lose their exclusive right to conduct Class III gaming, as assured in the compacts, those compact terms will be voided and the limits placed on gaming will be lifted. If that occurs, the tribes in the urban markets will no longer need to make transfer payments to rural tribes to acquire rights to additional gaming devices. Thus, this project which is sought to expand Class III gaming for one Indian Tribe could be completed at the expense of all other Arizona tribes. We believe that if this occurs, the Zuni Pueblo, like other rural tribes will suffer the most. For us, it would mean the loss of revenues provided to us under the compact, which we depend upon.

Plus, it must not be overlooked that the only protection that the non-gaming tribes had when the compacts were approved by Interior was its review to determine whether the compacts were consistent with its trust obligation to Indians. On their face, there would not have been a concern, given that the state and the tribes

were acting in concert, and the voters placed their imprimatur on the deal struck by Governor Hull and the tribal leader-negotiators. There is no way in the world that the non-gaming tribes would have willingly exposed ourselves to the uncertainty that has resulted from the Glendale casino plan announced by the Tohono O'odham Nation only two years ago. Nor would we have asked Interior to approve the compact had we known of the intention of our fellow tribe.

Zuni Pueblo supports the Tohono O'odham Nation's efforts to exercise its rights under federal law to remedy the taking of its lands in its San Lucy District through passage of the Gila Bend Indian Reservation Lands Replacement Act. As a fellow tribe we understand the importance of remedying past wrongs. All tribes have suffered hardship and many continue seek redress for past wrongs. So we are sympathetic but our sympathy has limits when these past wrongs are used to excuse concealing a plan to gain a competitive advantage over fellow tribes when it had a duty to disclose such a plan, and this plan puts all other Arizona tribes gaming ventures at risk.

Moreover, it should not be ignored that the Tohono O'odham received $30 Million dollars under the Land Replacement Act and was able to purchase over 16,000 acres with these funds as compensation for the 9,880 acres that were flooded. Nowhere in the Land Replacement Act does it say that the Tohono O'odham had a right to game on lands placed into trust under the Land Replacement Act, let alone well outside of its aboriginal territory. But, even if, for the sake of argument, that legislation can be interpreted to allow the Tohono O'odham to conduct gaming on lands placed into trust after 1988, the Tohono O'odham agreed not to seek expansion of its casinos into the Phoenix metropolitan area when it contributed to the Proposition 202 campaign in which it and other tribes promised voters in campaign materials that there would be no additional casinos in the Phoenix metropolitan areas.

The Zuni Pueblo is very concerned with how this legislation is now to be interpreted by Tohono O'odham, and the impacts it would cause for my tribe and other Indian tribes in Arizona. For that reason, we support the narrow scope of H.R. 2938 because we believe it is the simplest solution to this problem. The measure would not impact tribal sovereignty and would not impact the Indian Gaming Regulatory Act, whether in Arizona or elsewhere within the country. Instead, the law merely states what had been the common understanding of the rights and remedies available under the Land Replacement Act. In that regard, the measure would maintain the stability of the current compact structure and the recognition of the established reservation boundaries in Arizona, which had been the basis for the Proposition 202 negotiations by the tribes and the ultimate approval by the State voters.

As a Tribe in both Arizona and New Mexico, we have seen firsthand the harm which can result when a tribe tries to obtain noncontiguous land for gaming. In New Mexico, the ensuing battles and ill will stemming from the application by the Pueblo of Jemez to open a casino three hundred miles away has brought unfavorable attention from Congress, the U.S. Senators, the New Mexico Legislature, and the voters of the State. None of this attention has been positive, and the ill will it created among numerous parties and stake holders still remain. We think the Department of Interior made the right decision when it recently denied the application for that casino, and we hope that relationships among tribes and other interested groups will be restored and strengthened with passage of time, just as we hope to see in Arizona after Glendale casino dispute is resolved.

As your subcommittee examines this legislation and the controversy in Arizona which it is intended to address, we ask that you recognize and support the benefits of Indian gaming in Arizona under the current compact arrangement. That arrangement works because it supports everyone, including my Tribe. And if appropriate steps are not taken to maintain this stability, ultimately my Tribe and all tribes in Arizona will lose.

Thank you for the opportunity to provide the Subcommittee with this testimony.

Mr. YOUNG. Thank you. And I do appreciate both of you giving testimony in a very concise period of time. So the rest of you recognize that, too.

The Hon. Ned Norris, Jr., Chairman of the Tohono O'odham Nation.

STATEMENT OF THE HONORABLE NED NORRIS, JR., CHAIRMAN, TOHONO O'ODHAM NATION

Mr. NORRIS. Thank you, Mr. Chairman. Before I begin in my oral testimony, I would like to acknowledge my fellow tribal leaders in the room; my fellow tribal leaders sitting here at the panel with me, as well.

But also I would like to recognize one of our Tribal Council members from the Tohono O'odham Legislative Council that is here with us: Councilwoman Evelyn Juan-Manuel.

I would also like to recognize two members of the Gila Bend Indian Reservation, which we now call the San Lucy District. They are members of the District Council there. Councilman Gerald Pablo, and Councilwoman Caroline Mecham.

Chairman Young, Congressman Luján, and distinguished members of the Committee, I am Ned Norris, Jr., Chairman of the Tohono O'odham Nation. The Nation has some 30,000 members. Our reservation lands, which are not contiguous, are located in Maricopa, Pima, and Pinal Counties.

One of our reservation areas was the 10,297-acre Gila Bend Indian reservation, which was set aside for us in the 1880s, and which is in Maricopa County. Against the express wishes of the Nation, the Corps of Engineers built a dam that flooded the Gila Bend Indian reservation. The land was rendered useless, and the people who lived there were crowded into a 40-acre village.

Congress recognized that the flooding of our Gila Bend reservation had caused great hardship, because almost the entire reservation was unusable. The United States tried to replace our lost land with public domain land suitable for agriculture within a 100-mile radius of the reservation, but that land turned out not to be possible, but that turned out not to be possible.

In 1986 the Nation and the United States came to an agreement to settle our property rights claims relating to the flooding of the Gila Bend reservation. The settlement agreement was ratified by the United States when Congress passed, and President Reagan signed, the Gila Bend Indian Reservation Lands Replacement Act.

H.R. 2938 would fundamentally alter that settlement agreement. I must convey the Nation's profound dismay that the sponsors of H.R. 2938 have moved to do this without the Nation's consent; indeed, without even one moment of consultation with the Nation before the bill was introduced.

It is my hope that after you know more about the Nation and our land claim settlement, that you will reject H.R. 2938. It sets a dangerous precedent for all tribes.

In the Act, Congress directed the Department of the Interior to accept into trust the same number of acres that had been taken from us, in any of the three counties where we already have reservation land. The Act specifically states that replacement lands should be suitable for non-agricultural economic use; and that once it is in trust, the land must be, and I quote, "deemed to be an Indian reservation for all purposes."

Relying on the United States' commitment, the Nation bought about 135 acres of land in the West Valley area of Maricopa County, near the City of Peoria's shopping district and the City of Glen-

dale's sports and entertainment district. Our planned development is expected to create 9,000 new jobs.

It took some years after we purchased this property before we made a final decision to use it for this development. But once we did, we immediately reached out to our local elected officials and the community to develop the same kind of good, close working relationships we have with the communities where our other gaming facilities are located.

In August of 2010, the Department of the Interior issued a decision to take our West Valley land into trust. The Gila River Indian community, the City of Glendale, and others have challenged the Department of the Interior's decision. Our opponents say that the Lands Replacement Act could not have been intended to allow use of our replacement lands for gaming. But this is just not true.

Co-sponsors of our Act were directly involved in drafting the Indian Gaming Regulatory Act, at the same time they were working on our Settlement Act. If they had wanted to ban gaming on our replacement lands, they knew how to do it, but they did not.

Enactment of H.R. 2938 would create a very ugly precedent. The United States would unilaterally break the settlement agreements it made with the Nation a quarter of a century ago, which would be yet another black mark in the history of the United States' broken promises to Indian tribes.

In addition, enactment of H.R. 2938 would create new breach-of-contract, breach-of-trust, and takings claims against the United States for breaking the settlement agreement under the Lands Replacement Act, exposing the United States and American taxpayers to substantial liability, including compensation for the resources the Nation has invested in reliance on the current language of the Settlement Act, and for the economic benefits of the Nation we will lose if H.R. 2938 is enacted.

Enactment of H.R. 2938 would have a real negative effect on the Nation and its people. It will prevent the Nation from reducing its dependence on Federal funding, and prevent the Nation from getting closer to being able to adequately provide for its people.

I should note here that nearly half of our families on the reservation live below the poverty line, and more than 21 percent of our adult members are unemployed. But enactment of H.R. 2938 will not just hurt the Nation; it will also hurt the people of the West Valley. It will kill 9,000 jobs that would be directly created by our proposed development, and deprive the West Valley of the thousands of other jobs that would result from new local spending.

Finally, enactment of H.R. 2938 would directly interfere with ongoing litigation in both Federal and State Courts. These actions will determine whether the Nation has complied with the Lands Replacement Act and our Tribal-State Gaming Compact. So far, the Courts have confirmed that the Nation and the Department have acted entirely in compliance with the law.

I hope the Subcommittee realizes that it is precisely because the opponents, by losing in Courts, that they are now pushing Congress to change the law.

Mr. Chairman, members of the Committee, H.R. 2938 is nothing more than special-interest legislation designed to protect the market interests of a few, at the expense of the greater good of many.

The Tohono O'odham Nation has played by the rules every step of the way. All we ask is that you let us complete this journey without changing the rules so late in the game.

I thank you again for giving me this opportunity to speak to the Committee. I would be happy to answer any questions, and ask that my oral testimony become part of the record. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Norris follows:]

Statement of The Honorable Ned Norris, Jr., Chairman, The Tohono O'odham Nation of Arizona

Chairman Young, Ranking Member Boren, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs, my name is Ned Norris, Jr. I am the Chairman of the Tohono O'odham Nation. Twenty-five years ago the United States made a solemn promise to the Nation to redress the hardship and damage our people suffered when the Army Corps of Engineers flooded the portion of our lands known as the Gila Bend Indian Reservation. The United States' promise was enacted into federal law when Congress passed and President Reagan signed the Gila Bend Indian Reservation Lands Replacement Act (the Lands Replacement Act), Public Law 99–503.

I am here today to convey the Tohono O'odham Nation's outrage and profound sense of betrayal. H.R. 2938 would fundamentally alter the Lands Replacement Act, a settlement statute on which we have now relied for a full quarter of a century. My Nation was not consulted by the co-sponsors of H.R. 2938 before it was introduced nineteen days ago. And while I have always welcomed the opportunity to discuss the Lands Replacement Act, the Nation was not consulted as to the date of this hearing. Not only did it leave the Nation an inadequate time for preparation, it also takes place on one of the holiest of the Tohono O'odham religious days, precluding my participation in ceremonies of profound significance to my people.

That said, I do appreciate that I have been given an opportunity to share the Nation's story with you today. It is my great hope that once the Subcommittee knows more about the Nation, about our land claim settlement, and about what is really going on in the West Valley, you will reject H.R. 2938. I am confident that you will live up to Justice Hugo Black's admonition that "Great nations, like great men, should keep their word." *Federal Power Comm'n v. Tuscarora Indian Nation,* 362 US 99, 142 (1960) (Black, J., dissenting).

The Gila Bend Indian Reservation and the Flooding Caused by A Federal Dam

The Tohono O'odham Nation has approximately 30,000 members. Our reservation lands are located in central and southern Arizona in Maricopa County (where Phoenix is located), Pima County, and Pinal County. Historically, the Nation's lands included four separate areas, one of which was known as the Gila Bend Indian Reservation, located near the town of Gila Bend on the Gila River. Gila Bend is located in Maricopa County, and is part of the Phoenix metropolitan area. Before the events that led up to enactment of the Lands Replacement Act in 1986, the Gila Bend Indian Reservation encompassed about 10,297 acres.

In 1950, Congress enacted the Flood Control Act, Pub. L. 81–516, 64 Stat. 176 (1950), which, among other things authorized construction of the Painted Rock Dam on the Gila River. The primary purpose of the Painted Rock Dam was to prevent the flooding of nearby non-Indian agricultural operations. As Congress and the Department of the Interior later recognized, the Flood Control Act of 1950 did not authorize the condemnation of the Nation's lands.

In the 1950s, the U.S. Army Corps of Engineers began construction of the Painted Rock Dam, ten miles downstream from the Gila Bend Indian Reservation. Construction was completed in 1960. Despite the assurances of the Bureau of Indian Affairs and the Corps that periodic flooding caused by the dam would not harm the Nation's agricultural use of its reservation lands, and despite a 1963 U.S. Geological Survey report asserting that the long range effects of flooding would be "unimportant," the Gila Bend Indian Reservation sustained almost continual flooding throughout the late 1970s and early 1980s. Most of the people living there had to be relocated to a small 40-acre village known as San Lucy. The flooding caused pronounced economic hardship, destroying a 750-acre tribally owned and operated farm that had been developed at tribal expense, and rendering the remaining acreage unusable for economic development.

In 1982, Congress authorized the Secretary of the Interior to conduct studies to determine which of the Nation's lands had been rendered unusable for agriculture. Southern Arizona Water Rights Settlement Act of 1982 (SAWRSA), Pub. L. No. 97–293, sec. 308(a), 97 Stat. 1274 (1982); H.R. Rep. No. 99–851 at 6. Congress also authorized the Secretary, with the consent of the Nation, to exchange public domain lands for those reservation lands that had been ruined. SAWRSA, Sec. 308(b), H.R. Rep. No. 99–851 at 6.

A study of the reservation lands carried out in 1983 under SAWRSA determined that the flooding had rendered almost the entire Gila Bend Indian Reservation, more than 9,952 acres, unusable for either agriculture or livestock grazing purposes. H.R. Rep. No. 99–851 at 6. A later 1986 study to identify replacement lands within a 100-mile radius of the reservation concluded that *none* of the sites identified were suitable replacement lands, from either a lands and water resources standpoint, or from a socio-economic standpoint.

The Gila Bend Indian Reservation Lands Replacement Act

The destruction of nearly 10,000 acres of the Nation's lands caused extreme hardship for the Nation, giving rise to a number of claims against the United States. The United States was unable to redress the harm to the Nation by providing replacement lands for agriculture. So, in 1986, more than a quarter century after the dam was built, Congress created an alternative settlement mechanism to address the wrong done to our people and to settle our claims against the federal government. That was the origin of the Gila Bend Indian Reservation Lands Replacement Act.

The House Committee considering enactment of the Lands Replacement Act concluded that the Nation had a reservation "which for all practical purposes cannot be used to provide any kind of sustaining economy. Significant opportunities for employment or economic development in the town of Gila Bend. . .simply do not exist." H.R. Rep. No. 99–851 at 7. As a result, Congress explicitly directed the Secretary of the Interior in the Lands Replacement Act to accept into trust the same number of acres that had been taken from us, and explicitly contemplated that the lands would be for non-agricultural development. Congress specifically stated in the Act that the intent was to "facilitate replacement of reservation lands with *lands suitable for sustained economic use which is not principally farming."* P.L. 99–503, sec. 2(4), *see also* H.R. Rep. No. 99–851 at 9.

The Lands Replacement Act provides funds for land acquisition, and if certain requirements are met, it directs the Secretary to accept into trust up to 9,880 acres of replacement land within the three counties (Pima, Pinal, and Maricopa) in which our other reservation lands are located. P.L. 99–503, sec. 6(c) and (d). The lands may not be incorporated into any city or town. Also, the lands must consist of no more than three areas of contiguous tracts, including one area contiguous to San Lucy Village, unless the Secretary waives this requirement. P.L. 99–503, sec. 6(d). If these statutory requirements are met, then, at the request of the Nation, the Secretary of the Interior must accept the lands in trust and the lands thereafter will be "deemed to be a Federal Indian Reservation *for all purposes."* P.L. 99–503, sec. 6(d).

Section 4(a) of the Lands Replacement Act required the Secretary to pay the Nation $30 million in three installments of $10 million if the Nation agreed to assign to the United States "all right, title and interest" to 9,880 acres of its land within the Gila Bend Indian Reservation. The Act also required the Nation to execute a waiver and release of "any and all claims of water rights or injuries to land or water rights with respect to all lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the Nation" of that waiver. P.L. 99–503, sec. 9(a). In October 1987, less than a year after enactment of the Lands Replacement Act, the Nation executed an Agreement that contained this waiver and release, as well as the Nation's assignment of all right, title, and interest to the Gila Bend Indian Reservation. In short, Congress (i) enacted the Lands Replacement Act to compensate the Nation fairly for the nearly 10,000 acres of its lands that were lost due to the flooding caused by the Painted Rock Dam, and to allow the Nation to acquire replacement lands for economic development purposes that were not principally farming; and (ii) required in exchange that the Nation transfer property and rights to the United States and release the Nation's claims against the United States, both of which the Nation did years ago.

The Nation's West Valley Lands

After enactment of the Lands Replacement Act, the Nation began working to identify lands that would satisfy the requirements of the Act, so those lands could be taken in trust and used for economic development purposes. The Department of the

Interior already has taken one parcel of land (about 3,200 acres) in trust under the Act. One of the parcels that the Nation purchased is the West Valley property in Maricopa County, which is situated near the City of Peoria's upscale Peoria Crossings shopping district as well as the City of Glendale's sports and entertainment district. The Nation's West Valley Resort project is predicted to generate some 9,000 new construction and operations jobs for the West Valley, and the Nation and many others in the area believe the project will provide a huge economic boost to the region. The Nation has worked closely with the surrounding community to establish itself as a good neighbor and has the support of many in the area for its proposed resort casino project, including the Mayor of Peoria, the Peoria Chamber of Commerce, and many local business owners.

Although the West Valley property is a significant distance from other tribal gaming operations in the Phoenix metropolitan area (the nearest tribal gaming operation is more than twenty miles away), the Nation reached out to nearby tribes to discuss its plans and to try to address concerns. The Nation also reached out the Mayor of Glendale and its City Council. Despite the expected benefits from the project and despite the Nation's efforts to work with surrounding communities and tribes, the City of Glendale opposes the project, as do the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community. These two opponent tribes collectively operate five casinos in the greater Phoenix area, a region with over 4 million people, and 20 incorporated municipalities, across a land area encompassing approximately 2,000 square miles.

The Department's Decision to Acquire the Nation's Lands in Trust, and the Opposition's Efforts To Try to Block the Trust Acquisition

On January 28, 2009, the Nation asked the Department of the Interior to accept its West Valley property in trust, as required by the Lands Replacement Act. In July 2010, the Secretary determined, despite lengthy arguments submitted in opposition by the City of Glendale and the Gila River Indian Community, that the Nation's land meets the requirements of the Lands Replacement Act and that the Secretary has an obligation to take the land in trust. Accordingly the Secretary issued a decision to take the land in trust in August of 2010. 75 Fed. Reg. 52,550 (Aug. 26, 2010). The Gila River Indian Community, the City of Glendale, and other plaintiffs challenged the decision in federal district court in Arizona, but the district court upheld the Secretary's decision. *Gila River Indian Community, et al. v. United States and Tohono O'odham Nation,* No. 10-cv-1993–DGC (D. Ariz.) (Order dated March 3, 2011). Gila River, Glendale, and the other plaintiffs have appealed that decision to the Court of Appeals for the Ninth Circuit and the appeal is pending.

Having failed to convince either the Secretary or the federal district court that the Nation was not entitled to have its West Valley property taken into trust, the City of Glendale and the Gila River Indian Community lobbied the Arizona state legislature for special legislation to allow the City of Glendale to annex the Nation's land—without notice and without any of the procedural requirements usually required for annexation under Arizona law—hoping that annexation would make the land ineligible for trust status under the Lands Replacement Act. The Nation challenged that state law, and the federal district court in Arizona found the state annexation law to be preempted by the federal Lands Replacement Act. *Tohono O'odham Nation v. City of Glendale and State of Arizona,* No. 11-cv-279–DGC (D. Ariz.) (Order dated June 30, 2011). The City of Glendale and the State of Arizona also have appealed that decision to the Ninth Circuit and the appeal is pending.

In fact, every decision so far relating to the Nation's fee-to-trust acquisition has confirmed the Nation's rights under the Lands Replacement Act. So now the Gila River Indian Community, the City of Glendale, and other parties to the litigation have asked Congress to change the Act. More precisely, the proponents of H.R. 2938 ask Congress to unilaterally amend the Nation's land settlement, the Lands Replacement Act, an Act that the Department has said is "akin to a treaty." *Tohono O'odham Nation v. Acting Phoenix Area Director, Bureau of Indian Affairs,* 22 IBIA 220, 233 (1992).

Enacting H.R. 2938 Would Break the United States' Promise to the Nation

Enacting H.R. 2938 would break the promise made by the United States to the Tohono O'odham Nation to compensate the Nation for the nearly 10,000 acres of land that it lost due to the actions of the United States in exchange for the transfer of the Nation's Gila Bend land and the release of its rights and claims. More than twenty-five years after the United States constructed the Painted Rock Dam, the Nation and the United States entered into a settlement, embodied both in the Lands Replacement Act and in a formal written settlement agreement. There is absolutely no justification for this Congress to back out of the terms of that agreement. If Con-

gress enacts H.R. 2938, it not only will provide another example in the long, sad tradition of the United States breaking its promises to Indian Tribes, but it also will burden the United States and its taxpayers with very substantial liability for the breach of contract, breach of trust, and takings claims that the Nation will have against the United States for breaching the settlement agreement entered into under the Lands Replacement Act.

H.R. 2938 Conflicts with the Intent of the Original Drafters of the Lands Replacement Act

H.R. 2938 seeks to prevent the Nation from using the land it acquires under the Lands Replacement Act for gaming-related economic development. This is not a "*clarification"* of what the original sponsors of the Lands Replacement Act intended; rather, it would be completely inconsistent with what they intended.

The Nation's opponents assert that the lands acquired under the Lands Replacement Act were never intended to be used for gaming-related economic development. That is simply untrue. Indian gaming was not "invented" with the passage of IGRA in 1988. Indian gaming not only existed in 1986 when Congress passed the Lands Replacement Act, but the Nation had been operating a gaming business for several years in 1986. Moreover, due to the lack of federal restrictions on Indian gaming before the IGRA, Congress understood that, if it desired to prohibit gaming on Indian lands, it needed to do so through explicit statutory language. *See, e.g.,* the Florida Indian Land Claims Settlement Act of 1982, Pub. L. 97–399 (Dec. 31, 1982), the Ysleta del Sur Pueblo Restoration Act, Pub. L. 100–89, Tit. I (Aug. 18, 1987), and the Alabama and Coushatta Indian Tribes of Texas Restoration Act, Pub. L. 100–89 Tit. II (Aug. 18, 1987). In each of those pre-IGRA statutes, Congress explicitly restricted or banned gaming by those tribes. If Congress had wanted to impose a similar restriction on the Nation, it could have done so in the Lands Replacement Act—but it did not.

Moreover, no one can seriously contend that the co-sponsors of the Lands Replacement Act did not understand Indian gaming or that the Nation would be able to use its replacement lands for gaming-related economic development. Before Congress passed the Lands Replacement Act, two of its co-sponsors, Senator DeConcini and then-Representative McCain, were involved in the consideration of several pieces of Indian gaming legislation that were the precursors of IGRA. In 1983, three years before the Lands Replacement Act was enacted, an earlier version of IGRA (H.R. 4566) co-sponsored by then-Representative McCain contained no restrictions whatsoever on when or where land could be acquired in trust for gaming. In 1985, Senator DeConcini sat on the Senate Committee on Indian Affairs when it recommended passage of H.R. 1920, which became the primary basis for IGRA. When that Committee recommended passage of H.R. 1920 with an amendment in the nature of a substitute, the amendments included a provision excepting land taken into trust as part of a settlement of a land claim from the general prohibition on gaming on lands acquired after passage of the bill. Both Senator DeConcini and then-Representative McCain would have known that land acquired under the Lands Replacement Act for "sustained economic use which is not principally farming" might be used for gaming, particularly because the Nation was operating a pre-IGRA gaming facility across the street from the Tucson airport at the very time that the Lands Replacement Act was passed. In addition, these sponsors of the Lands Replacement Act were aware of high-profile Indian gaming litigation being conducted in the federal courts during this time period, as the Ninth Circuit rendered its decision confirming the rights of tribes to conduct gaming in early 1986 in *Cabazon Band of Mission Indians v. County of Riverside,* 783 F.2d 900 (9th Cir. 1986).

In light of the particular knowledge of two co-sponsors of the Lands Replacement Act about Indian gaming, the restrictions Congress placed on gaming in other Indian settlements in that time frame, and the high profile litigation that then was pending in the courts, it simply is not plausible to suggest that Congress did not understand that the language "[a]ny land which the Secretary holds in trust *shall be deemed to be a Federal Indian Reservation for all purposes"* meant that the Nation would be entitled to conduct gaming on those lands. P.L. 99–503, sec. 6(d).

I also note that the Department of the Interior's Office of the Solicitor confirmed that land acquired under the Lands Replacement Act could be used for gaming as far back as 1992. Also in 1992, the Nation informed the State of Arizona during compact negotiations of the Nation's rights under the Lands Replacement Act, including its right to conduct gaming on lands acquired under the Lands Replacement Act. The State of Arizona did not object to the Nation gaming on such lands, provided they were held in trust and met the requirements of Section 20 of the IGRA. The Nation's 1993 gaming compact expressly permits gaming on such lands, as does the Nation's 2003 gaming compact.

Finally, the Gila River Indian Community was well aware that lands acquired under the Lands Replacement Act could be used for gaming when Gila River and the United States negotiated the Arizona Water Settlements Act in 2004. P.L. 108–451 (Dec. 10, 2004). Yet both Gila River and the United States agreed to water rights settlement language and settlement legislation which reaffirmed the Nation's rights under the Lands Replacement Act.

H.R. 2938 Will Cause Real Harm to the Tohono O'odham Nation

In addition to the injustice of changing the law enacted to compensate the Nation and on which the Nation has relied in acquiring land for gaming-related economic development, the enactment of H.R. 2938 would have a devastating effect on the Tohono O'odham Nation and its people. More than 32 percent of the Nation's households have annual incomes less than $10,000, over 46 percent of the Nation's families live below the poverty line, and there is a greater than 21% unemployment rate among Tribal members on the reservation. The Nation has devoted an enormous amount of time and financial resources to its West Valley project in reliance on existing federal law; if H.R. 2938 is enacted, all the effort and resources the Nation has invested to reduce its dependence on federal monies and become self-sufficient, as Congress intended in the Lands Replacement Act, would be wasted.

H.R. 2938 Will Cause Real Harm to the West Valley: It is Job-Killer Legislation

Enactment of H.R. 2938 would kill off 9,000 new construction and operation jobs for the West Valley, as well as countless thousands of other jobs that would result from new local spending generated by both the resort and the people who work there. If Congress takes affirmative action to prevent this non-taxpayer funded economic stimulus from becoming a reality, Congress effectively withholds these thousands of jobs from West Valley residents.

H.R. 2938 Circumvents Pending Litigation

Enactment of H.R. 2938 directly interferes with ongoing litigation in both federal and state courts. There are currently three separate actions pending in the federal District Court for the District of Arizona and in the Court of Appeals for the Ninth Circuit. These actions will determine whether the Nation has complied with the Lands Replacement Act, other laws, and its Tribal/State gaming compact, whether the Department of the Interior has properly implemented the Lands Replacement Act, and whether the Act is constitutional and validly enacted in the first place. Thus far, the courts have confirmed that the Nation and the Department of the Interior have acted entirely in accordance with the law. For that reason, opponents of the Nation's plans (driven largely by market protection motivations) are pushing Congress to change the law. Surely Congress' role in Indian Affairs is not to create special legislation to protect the market share of the few to the detriment of the greater good of the many.

H.R. 2938 Will Create New Litigation: Breach of Trust, Breach of Contract, and Takings Claims

Enactment of H.R. 2938 will create significant new liability for the United States, as it will generate causes of action against the United States for breach of contract, breach of trust, and takings claims that could result in a substantial sum of money being awarded to the Nation. The Lands Replacement Act confirmed an agreement between the United States and the Nation, and this legislation reneges on that agreement and the promises underlying it. If H.R. 2938 is enacted, the United States will be liable for the immense resources that the Nation has spent in reliance on that agreement and for the economic development benefit that has been denied it. Ultimately, the American taxpayer will have to subsidize the cost of this special interest legislation.

Conclusion

Mr. Chairman and Subcommittee members, I thank you again for giving me an opportunity to speak to this Subcommittee on this legislation. In sum, I must reiterate that enactment of H.R. 2938 would break the United States' promise, as that promise was set forth in a contract and in settlement legislation, to compensate the Nation for the destruction of the Gila Bend Indian Reservation. Enactment of H.R. 2938 would interfere with ongoing litigation that will decide whether the Nation is entitled to move forward with its West Valley development plan, and would destroy the planned creation of 9,000 new jobs for the West Valley area. Enactment of H.R. 2938 would create new breach of trust, breach of contract and takings claims against the United States, thereby exposing American taxpayers to unnecessary financial risk. And finally, enactment of H.R. 2938 would add yet another

black mark to the United States' long history of breaking its promises to Native Americans. With all due respect, is the breaking of commitments made in long-established Indian land and water rights settlements really going to be the 112th Congress' legacy to Indian Country?

I thank you for your time today, and I would be happy to answer any questions you may have.

Mr. YOUNG. Thank you. Eric, Chief Deputy, Office of the Arizona Attorney General, you are up.

STATEMENT OF ERIC J. BISTROW, CHIEF DEPUTY, OFFICE OF THE ARIZONA ATTORNEY GENERAL

Mr. BISTROW. Mr. Chairman, ladies and gentlemen. Under the Gila Bend Act, the unthinkable has happened. The Tohono O'odham Nation, in the sole pursuit of money, and without regard for its fellow tribes and the citizens of Glendale, secretly purchased an unincorporated parcel surrounded by the City of Glendale, and announced they would add this land into its reservation, and then construct and operate a huge casino. This cannot be what Congress intended in the Gila Bend Act.

But the possibility now looms that a distorted interpretation of the Act will permit a casino to be operated on a new tribal reservation, located in the middle of a city, next to a high school and residential neighborhoods.

The prospect of a casino in Glendale would not only cause untold harm to the City and the people of Glendale; it also betrays the promises the Nation made to the State and the people of the State of Arizona.

The essential thrust of the Indian Gaming Regulatory Act is that casino gaming will be permitted to operate only pursuant to Tribal-State compacts. It is thought that States and tribes, negotiating in good faith, would reach balanced agreements that would protect each other's legitimate interests.

In Arizona, by the early 2000s, the dog- and horse-racing industries sought to siphon off a large portion of Indian gaming revenues, and asked voters to allow racetracks, located in urban areas, to operate thousands of slot machines. This led to a valid initiative called Prop 201.

At the same time, State officials negotiated a compact with 17 of Arizona's 21 Indian tribes. This compact, known as Prop 202, was submitted to the voters in November 2002 as an alternative to Prop 201. Prop 201 was defeated, and Prop 202 was enacted into law.

What did Prop 202 do? First, it protected Arizona's Indian tribes from non-Indian gaming competition. The only casino gaming in Arizona is conducted by Indian tribes.

It also reduced the number of gaming facilities that could be operated on tribal lands, while expanding the types of games that could be operated.

The policy objectives of Arizona's officials were clear: The State understood that casinos can impose costs on the State and on local governments, both in terms of lost revenues and by social ills, such as crime, bankruptcy, and pathological gambling behaviors. At the same time, there is a recognition that Indian tribes for generations had been mired in poverty, and that gaming offered them a real

opportunity to enhance their economic well-being. Prop 202 forced a compromise between these competing interests.

In reaching this compromise, the State made it clear that it did not want large-scale gaming facilities to expand into its heavily populated and urban areas. That is why it opposed and campaigned against the horse- and dog-racing initiative. That is why it reduced and limited the number of casinos on Indian tribal lands.

Official statements in favor of Prop 202 assured voters that no new casinos will be built in the Phoenix metropolitan area. The gaming was to be kept on Indian reservations, and not be allowed to move into our neighborhoods.

Every signatory to this compact, including the Nation, understood that the compact sold to the voters of Arizona would not allow for any additional casinos in the Phoenix area. Without this mutual understanding, there would have been no compact.

No one from the Nation, during the campaign, ever stated a contrary understanding. No one from the Nation said that it could, or that it intended to, purchase property in the heart of Glendale, and, under the Gila Bend Act, put a casino on it. Every interested party was left in the dark.

Now we have the specter of the Nation violating the solemn understanding that it reached with the State and its negotiating partners. It cared not that the casino would be located next to a high school and neighborhoods. It cared not about the effects of gambling on Glendale. It did not even care about its fellow tribes, and how a casino in Glendale would threaten their collective economic interests.

In short, it is not concerned with the balancing of interests that had been so delicately carved out in the Compact of 2002.

Arizona's Attorney General and Governor support H.R. 2938. The bill protects the integrity of the Prop 202 compromise between the State and the Indian tribes, and corrects the distortion of the Gila Bend Act that has brought us here today.

Thank you very much.

[The prepared statement of Mr. Bistrow follows:]

Statement of Eric J. Bistrow, Chief Deputy, Office of the Arizona Attorney General

I have been a lawyer for 40 years. During my career, I frequently dealt with statutory construction issues. I learned over time that our lawmakers try to redress grievances, enact just legislation, and serve the public good. Yet, in spite of their best intentions and their careful attention to the wording of legislation, there are times when the meaning of the law is perverted and twisted. When that occurs, our legislators are dismayed by the unintended consequences of their work. More importantly, public respect for our institutions is diminished.

Today we find ourselves dealing with the Gila Bend Indian Lands Replacement Act. This Act was passed in order to compensate the Tohono O'Odham Nation for flood damage to its farming property caused by the federally constructed Painted Rock Dam. Congress had benevolent intentions. It voluntarily agreed to pay the Nation $30 Million in exchange for damaged farm land and allowed the Nation to purchase replacement property in certain areas that would be put into its reservation system. But this right to put property into trust was not limitless. The Act excluded lands located within cities or towns.

Now anyone with commonsense knows that, in this context, "within" means inside the geographical boundaries of the city or town. And I say commonsense because no member of Congress would allow a tribe to acquire property in the middle of a city and then tell that city: "you have no power to ever regulate the land, collect

taxes, impose zoning requirements, require pollution control, or provide for the safety of your citizens; that you cannot do any of these things and more because there is a new sovereign government in town and you are helpless to do anything about it." The Gila Bend Act was not intended to lead to such nonsensical results.

And yet the unthinkable happened. The Nation, in the sole pursuit of money, and without caring one whit about the sensibilities of its fellow tribes and the citizens of Glendale, secretly purchased an unincorporated parcel surrounded by the City of Glendale and announced that it would add this land into its reservation and then construct and operate a huge casino. It argued that "within" did not mean a "geographical boundary" but instead referred to a "jurisdictional boundary."

Even more remarkable, the Department of Interior bought into the Nation's interpretation of "within" and decided it would accept the land into trust. It gave its imprimatur to an interpretation of a statute that led to absurd consequences and surely up-ended the original intentions of Congress. The possibility now looms that a twisted interpretation of the Act will permit a casino to be operated on a new tribal reservation located in the middle of a city and next to a high school and residential neighborhoods.

The prospect of a casino in Glendale would not only cause untold harm to the City and people of Glendale, it also betrays the promises the Nation made to the State and People of Arizona.

As you know, Congress enacted a comprehensive statutory scheme to regulate Indian gaming in 1988. The essential thrust of the Indian Gaming Regulatory Act is that Class III gaming—that is, casinos—will be permitted to operate only pursuant to tribal-state compacts. It was thought that states and tribes, negotiating in good faith, would reach balanced agreements that would protect each other's legitimate interests.

IGRA has been a resounding success from an economic perspective. Before IGRA was passed in 1988, there were 108 gambling facilities on Indian lands spawning some $100 million in revenues. By 2007, 226 tribes offered gaming at 419 sites generating gambling revenues of $26B. Gaming on tribal lands constitutes big business!

The economic juggernaut of casino style gaming did not pass Arizona by. By the early 2000's, the dog and horse racing industries sought to siphon off a large portion of Indian gaming revenues and asked voters to allow race tracks, located in urban areas, to operate thousands of slot machines. This led to a ballot initiative, Proposition 201, that was submitted to the voters in 2002.

At the same time that the dog and horse racing industries were gathering signatures for their ballot initiative, state officials under the leadership of Governor Hull negotiated a compact with 17 of Arizona's 21 Indian Tribes. This compact, known as Proposition 202, was submitted to the voters in November 2002 as an alternative to Prop 201. State officials opposed the racing track initiative and strongly supported the comprehensive agreement set forth in Prop 202.

Prop 201 was defeated and Prop 202 was enacted into law over 8 years ago. What did Prop 202 do? First and foremost, it protected Arizona's Indian tribes from non-Indian gaming competition—the only casino gaming in Arizona is conducted by Indian tribes. It also reduced and limited the number of gaming facilities that could be operated on tribal lands, while expanding the types of games that could be operated.

The policy objectives of Arizona's government officials were clear. The State recognized that there existed a strong aversion to gambling. It understood that casinos can impose costs on the State and on local governments, both in terms of lost revenues and by social ills such as crime, bankruptcy, and pathological gambling behaviors. At the same time, there was a recognition that Indian tribes, for generations, had been mired in poverty and that gaming offered them a real opportunity to create jobs, rebuild their communities and provide their members with decent schools, roads, water facilities, and other vital services. Prop 202 forged a compromise between these competing interests.

All of the parties to the compact understood the delicate nature of the compromise. The State made it clear that it did not want large scale gaming facilities to expand into its heavily populated and urban areas. Indeed, it rejected any such efforts. That is why it opposed and campaigned against the horse and dog racing track initiative. That is why it reduced and limited the number of casinos on Indian tribal lands. Official statements in favor of Prop 202 spoke in terms of "limited Indian gaming," that "no new casinos will be built in the Phoenix metropolitan area," that gaming was to be kept "on Indian reservations" and not be allowed "to move into our neighborhoods." Every signatory to this compact, including the Nation, understood that the compact entered into by the parties and sold to the voters of Arizona limited the number of facilities each tribe could operate and would not allow

for any additional casinos in the Phoenix area. Had there not been this mutual understanding, there would have been no compact.

When the compact was being negotiated and as the campaign to pass Prop 202 proceeded, no one from the Tohono O'Odham Nation stated a contrary understanding. No one from the Nation told its fellow tribes that it was eyeing a piece of property in the heart of Glendale. No one from the Nation said a word that it could or that it intended to purchase such property under the Gila Bend Act and put a casino on it. The State was left in the dark. Fellow tribes were left in the dark. The citizens of this State, and most important, the citizens of Glendale, were left in the dark. The Nation allowed Prop 202 to be signed and passed without uttering a word of its intentions to its negotiating partners.

So now we have the specter of the Nation secretly purchasing this 134 acre parcel in 2003, not in its own name, but in the name of a foreign corporation ("Rainier Resources LLC"). Two years ago, it announced its intention to put this property into trust under the Gila Bend Act with the avowed purpose to place a casino on the site. It knew, in doing so, the casino would be located next to a public high school and surrounded by residential homes. It cared not a whit about the solemn understanding reached with the State and its fellow tribal partners. Nor did it care about the broad public concerns regarding the deleterious effects of gambling and how those effects might harm cities such as Glendale in both social and economic terms. It did not even care about its fellow tribes and how a casino in the middle of Glendale would threaten their collective economic interests. In short, it was not concerned with the balancing of interests that had been so delicately carved out in 2002. It was concerned about one thing: profit.

The State of Arizona, by its Attorney General, supports H.R. 2938. The bill protects the integrity of the Prop 202 compromise between the State and the Indian tribes within its borders, and corrects the distortion of the Gila Bend Act that has brought us here today. Thank you.

Mr. YOUNG. Thank you, sir. The Hon. Robert Barrett. You are up, buddy.

STATEMENT OF THE HONORABLE ROBERT "BOB" BARRETT, MAYOR, CITY OF PEORIA, ARIZONA

Mr. BARRETT. Good afternoon, Chairman. Chairman and distinguished members of the Subcommittee, my name is Bob Barrett, and I am the Mayor of the City of Peoria, Arizona. I am speaking before you today on my own behalf; I am not representing an official position of the Peoria City Council, which has not yet adopted a position.

Let me be clear from the outset: H.R. 2938 is most certainly not about protecting the local community. It is job-killing legislation brought by selfish special interests. Unlike other matters this Congress may consider to promote job creation, this bill goes in the opposite direction. As the duly elected Mayor of my community, I cannot stand by while political gamesmanship so blatantly stands between my constituents and the opportunities for employment they desperately seek.

For those of you who are not familiar with greater Phoenix, the West Valley refers to the communities west of the City of Phoenix. The cities of Peoria and Glendale are the largest communities in the West Valley, bordering each other and Phoenix.

The West Valley has experienced some of the fastest growth in Arizona, but has also suffered significantly from the recession, and faces economic fragility. The Nation's West Valley land is not located in the heart of Glendale, unless Glendale wears its heart on its sleeve. The Nation's West Valley is located on an incorporated county island adjoining the cities of Peoria and Glendale.

As you can see on the map, visible on the screen—no, I guess you can't. If you look over here to the display, you are looking north from a place roughly hovering over the University of Phoenix Stadium, the home of the Arizona Cardinals. The line in purple at the bottom represents Glendale. The light brown at the top represents Peoria. The land in green represents the property purchased and owned by the Nation on unincorporated county land. The other land without color shading represents other unincorporated parcels, most of which are dedicated to agricultural uses at this time.

The highway is State Route 101, a loop freeway that circumnavigates much of the greater Phoenix region. This development is projected to create 6,000 construction jobs and 3,000 permanent jobs, jobs desperately needed in Arizona.

In addition to the direct employment benefits, the resort will create collateral economic benefits for the local businesses that will supply the goods and services needed to construct and operate the resort. The West Valley deserves to enjoy the benefits of tribal gaming that the East Valley has enjoyed for the past 10 years, from the very tribes who now selfishly seek to deny us the same economic benefits.

I want to emphasize that from the beginning, the Tohono O'odham Nation has engaged in an open dialogue with State and local leaders, including myself, community groups, and constituents. The Nation has also been receptive to feedback, as demonstrated through the revised site plan for the project that reflects movement of the casino closer to 95th Avenue and Northern. They have also gone on record in support of the planned improvements to Northern Avenue, contrary to the intense statement in H.R. 2938.

The day this project was announced, the leaders of the Tohono O'odham Nation met with me to inform me of their plans, as they did with many others. They made it clear to me that they were committed to work closely with me to address the concerns that I, my council, and my constituents may have.

Since that day they have lived up to that commitment. They have participated in hundreds of community meetings. They have joined our local Chambers of Commerce. They have sponsored important community charities, and participated personally in local events.

They have met with key potentially affected constituencies, including the Peoria Unified School District, to identify early on potential issues, and to work cooperatively to resolve those issues before an ounce of dirt has been turned.

There are many in our local community who understand the benefits of the proposed project, and fully support it. And I have brought with me, and would like to submit, comments, written testimony from The Honorable Adolfo Gomez, owner of the nearby, excuse me, Mayor of the nearby City of Tolleson, and The Honorable Phil Lieberman, a 20-year veteran of the Glendale City Council. Each asked that I bring to you today a copy of their respective written testimony in support of the project, and in opposition to H.R. 2938. And I ask that both statements be included in the record of this hearing.

Mr. YOUNG. Without objection.

Mr. BARRETT. Mr. Chairman, Honorable Members, H.R. 2938 was introduced less than three weeks ago. The directors of the legislation did not consult with me, or my City Council, or with Mayor Gomez or his City Council, or with the West Valley community in general.

While I very much appreciate the opportunity you have afforded me to testify today, I am but one voice among so many in the West Valley who support the Nation's project. Therefore, I strongly urge that you reject this legislation, or at a minimum conduct a field hearing in West Valley before further consideration. Come out and see for yourselves where this property is located, and the troubles we are experiencing. Perhaps most importantly, come out and help promote community dialogue that will help move this project forward in a way that works for all of us.

The picture the project's opponents have been attempting to paint for two years is completely at odds with what I have witnessed. In every respect, I have found the Tohono O'odham people, their elected leadership, to be honest, respectful, responsible, and personally engaged in working to improve the West Valley communities. From my perspective, they are already good neighbors.

I thank you again for giving me the opportunity to speak to the Subcommittee about this badly misguided legislation. I am happy to answer questions you may have.

[The prepared statement of Mr. Barrett follows:]

Statement of The Honorable Bob Barrett, Mayor,
The City of Peoria, Arizona

Chairman Young, Ranking Member Boren, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs. My name is Bob Barrett, and I am the Mayor of the City of Peoria, Arizona. I want to thank you for the opportunity to testify this afternoon regarding H.R. 2938. If enacted, H.R. 2938 would amend the Tohono O'odham Nation's land claim settlement statute, known as the Gila Bend Indian Reservation Lands Replacement Act, Public Law 99–503.

Before I begin, I need to clarify that I am speaking before you today on my own behalf. I am not representing an official position of the Peoria City Council. I will clarify that point later in my testimony. Let us be clear from the outset about what H.R. 2938 really is: job-killing special interest legislation designed to protect existing Indian gaming operations and those who benefit from those operations. This bill is *not* about whether the Nation's land lies within its aboriginal territory or about whether the proposed casino and resort complies with the tribal-state compact or other applicable laws. *And it most certainly is not about "protecting" the local community.* Rather, this bill represents an attempt to circumvent ongoing litigation challenging the Nation's project which, so far, has not gone to the established gaming interests' liking and has upheld the right of the Tohono O'odham Nation to develop its resort project.

For those of you who are not familiar with the greater Phoenix metropolitan area, the "West Valley" refers to the communities west of the City of Phoenix. The Cities of Peoria and Glendale are the largest communities in the West Valley, bordering each other and Phoenix. The West Valley has experienced some of the fastest growth in Arizona, but it has also suffered significantly from the recession and faces continued economic fragility.

The Nation's West Valley land is located on a county island (meaning that the land is not within the jurisdiction of either Peoria or Glendale) between the City of Peoria and the City of Glendale. The border between our two cities lies along Northern Avenue, which can be seen on the map which follows:

In this map, you are looking north from a place roughly hovering over University of Phoenix Stadium, the home of the Arizona Cardinals. The land in purple represents incorporated City of Glendale. The land in light brown at the top represents the City of Peoria. The land in green represents property purchased and owned by the Tohono O'odham Nation, on unincorporated county land. The other land, without color shading, represents other unincorporated parcels, most of which is dedicated to agricultural uses at the moment. The highway on the west side of the map is State Route 101, which is a loop freeway which circumnavigates much of the Greater Phoenix Region in a shape roughly equivalent to a horseshoe.

Because the Nation's proposed resort facility would be located just across the street from a commercial center within the City of Peoria, the proposed development is very likely to provide a much-needed economic boost to Peoria and Glendale and the surrounding community.

I want to emphasize that from the beginning, the Tohono O'odham Nation has engaged in open dialogue with state and local leaders—including myself—community groups and constituents. During these discussions the Nation's leaders described their plans and the economic and social impact that this proposed project would have on the West Valley. The Nation has also been receptive to feedback as demonstrated through the revised site plan for the project that reflects movement of the casino closer to 95th Avenue and Northern. They have also gone on record in support of the planned improvements to Northern Avenue at the urging of the local community.

This development is projected to create 6,000 construction jobs and 3, 000 permanent jobs—jobs desperately needed in Arizona, particularly in the construction industry. In addition to the direct employment benefits, the resort will create collateral economic development opportunities for the local businesses that will supply the goods and services needed to construct and operate the resort. The bottom line is that this proposed resort complex is a vital economic growth package for the West Valley, which neither the federal nor state government need expend one dime of taxpayer money to implement. It is designed to drive visitor traffic to an area that was specifically anticipated as a Sports and Entertainment District.

The day this project was announced, the leaders of the Tohono O'odham Nation met with me to inform me of their plans. They described their intentions and the necessary federal review to come. And they made it clear to me that they were committed to work closely with me to address the concerns I, my Council and my constituents may have. I know they met with many other local officials to introduce them to the project, and I have to assume they made the same assurances to them that they made to me.

Since that day, they have lived up to that commitment. They have participated in hundreds of community meetings. They have joined our local Chambers of Commerce. They have sponsored important community charities, and participated personally in local events. They have met with key, potentially affected constituencies, including the Peoria Unified School District, to identify early on potential issues, and to work cooperatively to resolve those before an ounce of dirt has been turned.

The Peoria City Council has not taken a formal position on this project. Why? We are engaged in extensive discussions with the Nation, and their engineering and architectural firms, regarding potential infrastructure requirements, transportation planning and other design matters. We are approaching those negotiations with an open mind, and remaining attentive to issues and complications that may arise. Our staff has visited the Nation's gaming facilities to review their operations and to understand how the West Valley Resort may be similarly operated.

To take a formal council position of either support or opposition may compromise the integrity of those discussions, and lead us to take conclusions that may not necessarily be in the best interest of our City. But speaking personally, I have every confidence that these matters will be reconciled successfully, and that after more formal consultations, support from my Council will be easy to come by. In my mind, Council neutrality is appropriate at this time to allow our city staff to conduct their work professionally and dispassionately. But I am very anxious for litigation to be concluded, and for this project to proceed so we can see many of our people get back to work.

There are many in our local community who understand the benefits of the proposed project and fully support it. In fact the Honorable Adolfo Gamez, Mayor of the nearby City of Tolleson, asked that I bring to you today a copy of his written testimony in support of the project—and in opposition to H.R. 2938—and he and I both ask that it be included in the record of this hearing. As Mayor Gamez said more than a year ago when the established gaming interests first tried to stop this project through efforts to change state law, "I can't see the logic of not bringing jobs to the West Valley." *Tolleson Backs Tribe's Plan for Glendale Casino,* The Arizona Republic (Feb. 20, 2010). I want to make sure that everyone here today understands that this project will provide a huge economic boost to our region.

Mr. Chairman, Honorable Members of the Committee, H.R. 2938 was introduced *less than three weeks ago.* The drafters of the legislation did not consult with me or my City Council, or with Mayor Gamez or his City Council, or with the West Valley community in general. Not only were we not consulted regarding this legislation, but we strongly object to the fact that the legislation is being fast-tracked by scheduling a hearing with so little notice to the community that it will affect most. While I very much appreciate the opportunity you have afforded me to testify today, I am but one voice among so many in the West Valley who support the Nation's development project.

I strongly urge that before you move forward with this legislation—before you decide whether to kill off these 9,000 jobs and the ongoing economic growth opportunities for the West Valley—that the Subcommittee consider holding a field hearing in the West Valley. Come out and see for yourselves where this property is located. Come out and see for yourselves how our communities are suffering during these recessionary times. And come out and see for yourselves whether you think special interest legislation to protect the market share of a few is worth compromising the greater good of the many.

Finally, I want to register my significant personal discomfort that parties involved in litigation against the Tohono O'odham Nation's project now seek to effect a change in federal law in order to skew the outcome of that litigation. In my view, the Nation has been playing by the rules set out for it by Congress. If it should turn out that the courts disagree based on the law as it is currently written, then so be it. But for Congress now to amend the law is to change the rules in the middle of the game—this to me is fundamentally unfair, and frankly unworthy of our federal government.

I thank you again for giving me an opportunity to speak to this Subcommittee about this legislation, which would unfairly prevent the Tohono O'odham Nation from pursuing its planned West Valley Casino/Resort development, would destroy 9,000 new jobs for Peoria, Glendale and the rest of the West Valley, and would ensure that we do not benefit from the related economic growth and development opportunities that will be created by the Nation's West Valley project. I do not think that the folks responsible for this legislation have heard the whole story, and they certainly have not heard from the many local officials and business leaders who strongly support this project. For all these reasons, I believe that H.R. 2938 is ill-advised, and I hope that the Subcommittee will not recommend that this legislation become law.

I am happy to answer any questions you may have.

Mr. YOUNG. Thank you, sir. Now, Mr. Luján.

Mr. LUJÁN. Thank you very much, Mr. Chairman. You are always looking after me, Mr. Chairman.

I want to welcome one of my Governors from Zuni, as well, for being here, Governor Quetawki. It is always a pleasure, sir, to have you here, and members of the Council, as well as those we have had a chance to visit with today on educational initiatives on behalf of the Pueblo Zuni.

Also our friends that are both with us, President Enos and Chairman Norris, thank you both for being here, as well.

Governors, can you explain to the Committee what Proposition 202 is, and what it means to the tribal communities? I know this is an area that we have had some conversation on, but just specifically with the importance, especially to Zuni, with what Proposition 202 laid out as a foundation and moving-forward policy in Arizona?

Mr. QUETAWKI. Can you repeat that again?

Mr. LUJÁN. Governor, if you could just give us your perspective on the importance of Proposition 202, with moving the gaming compacts forward, which provided a platform for the Governor to enact some of those gaming compacts in Arizona.

Mr. QUETAWKI. OK. Well, specifically for Zuni, these Proposition 202 is very important to us, is that it allows the non-gaming tribes, the remote tribes like Zuni, being afforded that opportunity to get revenue sharing. The lease agreements, slot machine transfer agreements. And we utilize those machines, the revenues, to the best we can.

And again, if this issue that we are talking about, H.R. 2938, goes into effect, the disastrous impacts it is going to create on those small tribes.

Mr. LUJÁN. And President Enos, can you explain the gentleman's agreement about gaming in the Phoenix area, and how the Tohono O'odham was involved in this and was the tribal party to the agreement? And when was that made specifically?

Ms. ENOS. Certainly. Thank you for the question. I wouldn't call it a gentleman's agreement, because there were some gentlewomen that signed it, as well.

Mr. LUJÁN. I am corrected, Madame President.

Ms. ENOS. I am just teasing. But when the States, excuse me, when the tribes agreed to come together and negotiate with the State, we knew that in order to present and provide a unified front, that we had to come to an understanding amongst each other. That is in a written document, and it is the document that I had on the screen. It is included in part of my written testimony. It is called an agreement in principle.

All the tribes that agreed that we would share our concerns and we would come together on a unified front, that was the critical part. Because we knew the racetracks and the beverage owners weren't after slot machines; they were after Class III gaming. And we knew that in order to effectively, efficiently, and cleanly deal with the Governor and the State of Arizona, that we had to be together. We had to be united.

So all the tribes signed that agreement. And the critical part of that was that if, in signing the document, if a tribe felt that it had to, had to take some actions that were inconsistent with the interests of the body of tribes, that it had a duty to disclose that to the

rest of us. Tohono O'odham signed that, yet they didn't disclose to us that they were looking to buy land in the Phoenix area.

Mr. LUJÁN. And Mr. Norris, pertaining to the agreement in principle, thee are two bullets there, in the therefore clause. One is bullet point four and one is bullet point five, that I believe that President Enos was just referring to, especially bullet point five.

But bullet point four reads, "The tribal leaders' first priority is to protect the interests, sovereignty, and right to self-determination of their individual Indian Nations. Nothing in this agreement shall be construed to impair their tribal leaders' ability to protect the sovereign interests of their individual Indian Nations, or their ability to take any action inconsistent with the actions or positions of other tribal leaders."

Number five reads, "Tribal leaders will make a good-faith effort to notify other tribal leaders if they believe that they cannot abide by this agreement, or that they must take positions or actions inconsistent with those of other tribal leaders."

With that being said, Mr. Chairman, how has the tribe moved forward, under your leadership and under the previous Chairman as well, in this area, specific to those two bullets?

Mr. NORRIS. Thank you for the question, Mr. Chairman and Mr. Luján, members of the Committee. I have to respond to one thing that it wasn't until President Enos's testimony became public that I was aware, or even saw that particular agreement that you are referring to. I have not seen it until I have seen it in her testimony.

And I also have to say that at the time that agreement was discussed, I was not privy to the conversations that typically would have been held in executive session by elected tribal leaders only to make those decisions. Although I was involved as an employee of then our current gaming operation, I was allowed to participate in the meetings to the extent that I, along with lawyers and lobbyists and non-elected persons, were excused from those meetings when the tribal leadership chose to have much more detailed conversations. Similar to what we do even today, when tribal leaders want to discuss issues amongst themselves.

So in answer to your question, what I have to say, too, is that in 1992, what I do know is that in 1992, the State of Arizona and an attorney that represents one of the tribes that are in opposition were advised of the Nation's acquisition of this property, and there was no disagreement amongst those representatives that the Nation could game on these after-acquired lands, in accordance with the current compact, with the compact at that time.

And so based on the current terms of the compact, it is our position that, and much reference was made to the 50-mile clause in the Tucson market to Section [j] in the compact, it is that section that the Nation feels it has the authority to move forward and acquire this land into trust, and game on that land. Because the compact that my Nation's leadership signed, along with the Governor at that time, provides for the Nation's ability to game on after-acquired land, as long as that land has been acquired as the result of a land settlement, and it is a provision under our current compact.

Mr. LUJÁN. Thank you, Mr. Chairman.

Mr. YOUNG. Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman. I still feel a little bit like an interloper.

Mr. YOUNG. If you become an interloper, I will let you know. Go right ahead.

Mr. SCHWEIKERT. I have the funny feeling, knowing how shy and retiring you are, you would, yes.

Is it Mr. Barstow?

Mr. BISTROW. Bistrow.

Mr. SCHWEIKERT. Bistrow. And this is one, forgive me, I am just trying to also help put some things back into context. Have you, not only as the Attorney General's Office, but also been working with the Governor of the State?

Mr. BISTROW. Yes. We are on the, as far as I know, the Attorney General and the Governor are in sync on this issue.

Mr. SCHWEIKERT. OK. I did not know if you have had conversations with her, because she has an interesting history of this area and this community. I believe this was substantially her legislative district when she was also on the Board of Supervisors, this area, and now obviously as Governor.

But Jan, or Madame Governor, was actually the Whip in the Senate when I was the Whip in the House, and dealing with the first set of compacts. Just from a personal anecdotal standpoint, a lot of people don't realize we were very close to having the votes to remove horse tracks, dog tracks, and the lottery, and go the other direction in IGRA. Which is saying we will be like Utah; we just won't have it. And it was substantially because of the fear of this type of situation.

President Enos, can I ask you to step back. Were you involved in the Prop 202 campaign?

Ms. ENOS. Yes. I was an elected official at the time, and Salt River was involved in the whole process. And while I heard Chairman Norris say that he didn't know about the agreement in principle, the agreement in principle was signed by Chairman Manuel, who was a chairman at the time, and Tohono O'odham was active in all phases of the Prop 202 campaign. And part of my written record, written testimony includes references to now-Chairman Norris making assertions about our unity, and about the tribes and Chairman Manual sticking together.

And I would also acknowledge that the Tohono O'odham Nation contributed a large part of, a significant amount of the monies to finance that campaign, and was involved in the steering committee for the Arizona Indian Gaming Association developing those messages that we were giving to the voters and the State of Arizona.

Mr. SCHWEIKERT. Mr. Chairman, Madame President, do you remember the discussions in the ads and all the brochures, about vote for this, it will help our rural tribes be able to move their allocations; but at the same time, it would also limit the number? And I don't know why that is sort of burned into my memory, and I am trying to have someone else also confirm that piece of memory.

Ms. ENOS. Absolutely. Because as I mentioned earlier, the coalition of 17 tribes, it was called the, it was the Initiative for Fairness I believe, something like that. But during that campaign, the monies that we all contributed together, including Tohono O'odham, we had television ads, we had bumper stickers. There were voter

guides, pamphlets that went out to the voters in Arizona to get them to vote for Proposition 202.

Mr. SCHWEIKERT. OK. And Mr. Chairman, this one is for anyone that is on the Committee. Let us reach back to that 2002 campaign. What would have happened if the initiative that was I think primarily financed through some of the horse and dog tracks had been victorious? If it had the most votes, so we would have had Class III gaming at those establishments? Do I have anyone that is comfortable saying what would have happened to our existing compacts at that time?

Ms. ENOS. Well, I am comfortable answering that question.

Mr. SCHWEIKERT. Did we disclose to everyone you are a lawyer, also?

Ms. ENOS. I am very proud of it, thank you. Honorable profession.

[Laughter.]

Mr. SCHWEIKERT. Oh, no. I think I may have hurt us with the Chairman.

Ms. ENOS. You know, what would have happened, it is hard to go back and predict, and go back in time. But it certainly would have made things different.

And I acknowledge what Chairman Norris just said, about him not knowing about our agreement in principle, and not being aware of it now. I guess the question that I would have is that, does that mean that you understand that the Tohono O'odham Nation made a promise then, and broke that promise to not only the other tribes in Arizona, but the voters in Arizona, and the Governor?

I am sorry, what was the question? I am getting excited here.

Mr. SCHWEIKERT. Well, it was just my, my fear is sort of the looping back, that if the racinos had passed, what that would have done to the compacts and the whole nature of Arizona.

Ms. ENOS. Yes. Mr. Schweikert, part of the campaign, and this is what Governor Jane Hull in fact said in the press conference where she supported the compact the tribes had negotiated. She said many things, but one of them is she said this would keep, limit the number of casinos in the Phoenix metro area to seven, because that is what, that is what exists right now.

And then-Attorney General Janet Napolitano also was supportive of Prop 202. And she said this will keep gaming out of our neighborhoods. So there were many supporters that aligned with the 17-tribe coalition in support of the Prop 202 campaign.

And it is hard to say what would have happened. I know that Salt River would have objected strongly if Tohono had said look, folks, we are getting ready to purchase some land in the middle of metro Phoenix, or Glendale, or Peoria, wherever that is, in that area there. I know that it would have diametrically changed everything.

Because not only in those negotiations among the tribes ourselves, we had to do a lot of give-and-take; the number of slot machines, the number of locations. Salt River already, and Gila River, gave up one casino, the right to have a casino. But Tohono maintained their right to have four casinos, and to have an additional one in Tucson, as part of those negotiations.

Mr. SCHWEIKERT. Mr. Chairman, thank you, Madame President. Thank you for your tolerance. Thank you, sir.

Mr. YOUNG. Mr. Kildee.

Mr. KILDEE. Mr. Chairman, I yield my time to Mr. Franks from Arizona.

Mr. FRANKS. Thank you, sir, that is very kind. I appreciate that.

Let me address the first question if I could to President Enos. As you know, President Enos, after Congress enacted the Indian Gaming Regulatory Act in 1988, referred to as IGRA here, it specifically required that for gambling or gaming to be allowed in the tribal areas, that there had to be a compact with the State and among the tribes. That was one of the fundamental predicates of the entire situation.

As you know, Arizona enacted legislation that restricted gaming within the State to existing or contiguous reservation lands, and prohibited the Governor from concurring with any Federal decision to allow gaming on so-called after-acquired lands that were not contiguous to an existing reservation. Also, a complex background there.

But with that background, you mentioned the written agreement among the tribes promising good faith and solidarity. I know that you have covered this so well, but would you reiterate, in the key areas, what you think the purpose of that agreement was? Ultimately, was it not to meet this requirement of IGRA, to create a compact to allow the gaming on the tribal lands?

Ms. ENOS. Yes.

Mr. FRANKS. And please feel free to elaborate.

Ms. ENOS. Mr. Franks, yes, it was. And when the tribes—I have to explain the process that we underwent, undertook actually.

The tribes met as a group, as a coalition. And we understood, the first thing the Governor said was limited gaming. Limited gaming. Otherwise the State is not going to talk to you about this; we are not going to negotiate with you.

So the tribes, we began to negotiate amongst ourselves. And we knew that we couldn't have as many machines as we wanted. We knew that we couldn't have as many facilities as we wanted, because the State said limited gaming.

And also, the requirements with IGRA, which was enacted in 1988, were well in place, and we recognized that as a framework that we had to work with, with dealing with the State, with negotiating with the State.

So after-acquired lands is clearly a restriction on the Governor to approve those compacts that have land that is after-acquired, presumably after the 1988, and I think the statute specifically says that. But you are correct, in lands that are not contiguous.

The State of Arizona has a very strong interest against expanded gaming. Thus, the clearest answer I can give to you, to all of you here, the State of Arizona negotiated with the tribes in good faith and fair dealing, to limit gaming to then-existing lands, homelands. And it was our clear understanding, not only amongst each other, but with the Governor and with the voters of Arizona, but also with the Governor and the State.

So IGRA, the way we looked at IGRA was that we all had to play by IGRA. And again, I go back to the point that Tohono O'odham

didn't tell us, when we were negotiating amongst ourselves in 1999 to 2002 and into the Prop 202 campaign, they did not tell us. Not once did they say we are thinking of buying land in the Phoenix metro area, and we are even thinking that it is going to be consistent and under IGRA. Nobody said that to us. They didn't tell the State, they didn't tell us.

And again, it goes back to the very concept of fair dealing. It goes back to the very concept of keeping your promise. It goes back to the very basis on which the compact was signed by the State of Arizona and the tribes. Trust, reliance, and a promise. And they were not, they didn't play along with that.

Mr. FRANKS. Thank you, President Enos. I guess thee are two questions I would like to throw in here, and I will get it in here and let you answer them as you can.

One is, if the compact should blow up, given the construct of IGRA, if the compact should blow up, does it not call into question the entire legality of some of the other reservation gaming that is occurring now? I mean, at this point, if the compact dissolved it would be in direct conflict with IGRA for there to be any gaming in Arizona. Is that correct?

Ms. ENOS. Well, what would happen, in practical terms, if the Tohono O'odham Nation is permitted to game in Glendale, not only will the voters, the promises that the tribes and that we all made that no more casinos in the Phoenix area, no more than seven, that promise is violated. And that trust that we asked for from the voters of Arizona and the State is gone.

It is almost like dealing with somebody, you have business dealings with somebody. You sit down at the table, and you want to work out a partnership of sorts. You put everything that you have on the table: This is what I am dealing with, these are my potentials, these are my negatives. Because you have an expectation that people are going to be truthful, and that the result will be what everybody understands.

You can't deal with another party, especially in a partnership-type relationship, which is what this was, and crossing your fingers behind your back. You can't do that.

There is a provision in the Arizona Compact that says specifically if non-Indian interests get slot machines, get Class III gaming, then all bets are off. They call that the Poison Pill provision.

And what it means is that if the racetracks are able to get slot machines, or the beverage owners, as they are asking for right now, then the tribes don't have to provide any more revenue sharing, and we can build 20 casinos. But that makes the State of Arizona a gaming State, and everybody can have slot machines. Everybody.

And that is what people mean when they say the compact could blow up here. Because we have achieved what, in a lot of our opinion, is a well-balanced agreement among not only the tribes, the cities, the counties, the State and the citizens of Arizona. That is what would be disrupted here.

Mr. YOUNG. Your time is up.

Mr. FRANKS. Thank you, Mr. Chairman. Thank you. Thank you all for being here.

Mr. YOUNG. Mr. Eni.

Mr. GRIJALVA. Thank you, Mr. Chairman. If I may, Mr. Chairman, ask unanimous consent to enter into the record letters in opposition to the legislation, the Pascua Yaqui Tribe, San Carlos Apache Tribe. And also the map of the Arizona Indian Lands map, which shows O'odham Nation's reservation in Gila Bend, entrusted forests within the claims of Salt River aboriginal territory, 71 letters of support from West Valley businesses and organizations, and a letter from Senator DeConcini to Secretary Salazar.

Mr. YOUNG. I don't object. I can't understand it all, but I don't object.

Mr. GRIJALVA. It was pretty miserable reading after a while, but anyway.

[Laughter.]

Mr. GRIJALVA. Part of the discussion is about precedent, and I want to get a little bit. Because I understand—no, I don't understand where the motivations and emotions are around, around the issue.

But one, if I may ask Chief Deputy, one of the points that you testified is that in no way the drafters of this settlement act that is central, and the interpretation of this settlement act is central to the discussion in the ongoing process, what it could have meant to allow the Nation to acquire land within county islands. And that you are concerned that the Department of the Interior has interpreted the settlement to allow for this.

Let me quote to you from the letter that I entered into the record from Senator DeConcini to the Secretary. "I also understand that some are now asserting that because the land is adjacent to existing incorporated areas, that it is somehow unsuitable to meet the purposes of the legislation. While our State's population has grown significantly since the legislation, it is important to note that there were unincorporated lands adjacent to incorporated communities even then. For some now to interpret this legislation included an additional requirement that replacement lands be isolated, and thus its economic value diminished, is incorrect, both in terms of the letter of the law and in this Senator's intent."

Would you care to comment on Senator DeConcini's letter?

Mr. BISTROW. I haven't seen Senator DeConcini's letter, but this is what I meant by a written statement.

There was an exclusion under the Gila Bends Act, which basically said that that land cannot go into the reservation if it was within a, and I am paraphrasing, within a city or any town.

Now, my view is that that meant within the geographical boundaries of a city or a town. I think that is the plain reading of that particular statute. I cannot imagine——

Mr. GRIJALVA. No.

Mr. BISTROW. If I can continue.

Mr. GRIJALVA. Well, I have limited time, with all due respect. I have five minutes. The point is that you haven't read the letter, and you probably should.

The next, other part of precedent is this. I think, you know, there has been comments, and I think the Governor made some good comments in his testimony about that nowhere in the Land Replacement Act does the O'odham Nation have the right to game on

its lands placed into trust under the Land Replacement Act, let alone outside aboriginal territory. I read that quote.

The precedent issue for me continues to be a vivid one. The Zuni Pueblo has benefitted from several land acquisition statutes. None of those statutes, both in Arizona and in other trust decisions, none of those statutes have a provision authorizing gaming.

So one can then conclude, on a precedent, that it is the position that it would be illegal for lands acquired under this kind of order, under these statutes; it would be illegal because no express language exists to prohibit it, or to allow it.

The same as in any settlement issue. And this is I think that Pandora's Box said all Nations should be concerned about; that the restrictions in H.R. 2938 was drafted without consultation to the Nation affected by it. That, for instance, there are complaints that some of the tribes did better off on the water settlement in Arizona than others.

So to me, so the precedent would be would it be acceptable, then, to also amend let us say the Gila Rivers 2004 water rights settlement to reduce its water allocation, so that other—over the Gila Rivers' objection, which would be immediate, because it would serve other Arizona tribes' interests.

The precedent issue continues to be one, Mr. Chairman. And while the settlement issue has to be, has to go through its process, this legislation I think is going to open up a box both of litigation, and inevitably, if the concern is about the effect on gaming in the long term, and what it did to the compact.

And I don't believe the settlement violates the compact, and that has already been, it is being litigated, this whole issue. It is in the process in the Department of the Interior and before the Commission.

I would suggest that the prudent and the wise route to go is to let the process run its course, and let those decisions be made without jeopardizing not only the relations in the State among people, but more importantly, setting precedents that are going to come back and haunt us one after another. Legislation specific to a tribe, restricted to a tribe, in this case I think opens up a precedent on a settlement that anyone concerned about the sovereignty in Indian country should be concerned about the legislation.

With that, let me thank you, Mr. Chairman, for this hearing, and suggest prudence, if anything else. Thank you.

Mr. YOUNG. I want to thank the gentleman. Mr. Norris, do you have casinos?

Mr. NORRIS. Mr. Chairman, members of the Committee, yes, we do.

Mr. YOUNG. How many?

Mr. NORRIS. We operate three.

Mr. YOUNG. In Tucson?

Mr. NORRIS. Two in the Tucson, and one on the furthest western end of the Tohono O'odham Nation, near Ajo, Arizona.

Mr. YOUNG. Now, do you share, or do you lease slot machines and stuff from other tribes?

Mr. NORRIS. We have leased machine rights from two other tribes.

Mr. YOUNG. Two other tribes. I am just curious about, if this new one was to be built, would you be under that same agreement?

Mr. NORRIS. As far as the lease terms are concerned, or the compact?

Mr. YOUNG. Would you be able to lease, I mean, more machines from other smaller tribes?

Mr. NORRIS. Mr. Chairman, members of the Committee, the Tohono O'odham Nation is currently at its maximum capacity for machine rights under the current compact, and any rights we may have to lease additional machines.

Mr. YOUNG. So how would you put machines in a new casino?

Mr. NORRIS. We have some rights to machines that we have not put into play at this point.

Mr. YOUNG. So the three are not fully occupied.

Mr. NORRIS. Right.

Mr. YOUNG. OK. Well, I want to thank the panel. I think you have done well. And we are going to hear a lot from all the members of this Committee and other interested parties.

I do have the agreement in principle signed by the Tejon Tribe in 2000, I guess it was 2000, and all the other ones. I am interested in when it was signed. We have one in 2000, one in 1999, is that the way it is? Ninety-nine and 2000. We have only one tribe that didn't sign; that was the Prescott Tribe? Yes, that is the one that didn't sign out of all the tribes.

I want to thank you all.

Mr. LUJÁN. Mr. Chairman? Mr. Chairman.

Mr. YOUNG. Mr. Luján, yes. He has a question.

Mr. LUJÁN. Thank you, Mr. Chairman. Mr. Bistrow, I guess one question that is on my mind, based on the conversation that we had here, based on the compacts and the mentioning of Phoenix, and not having the compact in front of me.

Is Phoenix mentioned in the compact specifically?

Mr. BISTROW. Not specifically, not specifically I think in the sense that you are saying it. Basically, it is our view that this promise has remained during the campaign that there would be no new casinos in the Phoenix area. There were campaigns that were waged against Prop 201, the racing initiative.

Indeed, the Tohono O'odham Nation campaigned against that particular proposition on the basis of——

Mr. YOUNG. Will the gentleman yield? This is Prop 202. "Does Proposition 202 limit the number of tribal casinos in Arizona? The answer is yes. In fact, Proposition 202 reduces the number of authorized gaming facilities on tribal land, and limits the number and proximity of facilities each tribe may operate under Proposition 202. There will be no new additional facilities authorized in Phoenix."

Mr. BISTROW. OK. Mr. Chairman——

Mr. YOUNG. But it does say one in Tucson.

Mr. LUJÁN. And Mr. Chairman, that was the followup question. It sounds like it is not explicitly listed in the compact, but it was included in Proposition 202.

Mr. BISTROW. That is right, in the campaign circulars, in all of the ad campaigns. Many of those ad campaigns, as a matter of fact, in the testimony before the Arizona State Senate, those statements

were made by the Indian tribes, as well. So it is clearly understood in Arizona that that was one of the terms of the compact.

Mr. YOUNG. Madame President?

Ms. ENOS. I would like to respond to that question. The compact specifically lists casino facilities, and it lists specifically seven casinos. And it lists, actually there is a table that shows the number of facilities that each tribe is allowed to have under the compact.

And in the Phoenix metropolitan area there are seven casinos in the compact that are allowed for the seven, for the tribes in the Phoenix metro area.

But I really wanted to respond to Congressman Grijalva's, I think it was a question, and I didn't hear a response to it. But he is talking about precedent.

Congress clearly has done land settlements specifically. We don't believe that this was a land settlement, for one thing. But for instance, the Narragansett land claim was settled, and Congress went back and amended it and precluded gaming on that. The Colorado River specifically, reservation, precluded gaming. The Mashantucket Pequot situation also, Congress specifically precluded gaming. Congressman Grijalva's own measure that he introduced on the Cocopah lands specifically precludes gaming.

Mr. LUJÁN. And President Enos, if I may, because we are running out of time.

Ms. ENOS. Sure.

Mr. LUJÁN. Chairman Norris, quickly, and then I will yield to Congressman Grijalva, just to respond there quickly.

Mr. NORRIS. Thank you very much, Congressman and Mr. Chairman. I just wanted to quickly say that the Tohono O'odham Nation's compact that we have currently signed with the State of Arizona authorizes the Nation to game on after-acquired lands. That is the provision that is already in there.

And the provision is that we can game on after-acquired land as long as that land was acquired as a result of a land settlement.

Contrary to President Enos's comment, and based on the decisions by the Department of the Interior, the Gila Bend Indian Land Replacement Act is land settlement; it is the settlement of land of almost 10,000 acres that was totally destroyed by the U.S. Government.

I am not an attorney, sir. I would like, if possible, my attorney, who is sitting with me, to clarify certain provisions under the compact.

Mr. LUJÁN. If I may, Chairman Norris, if we could ask him to submit that in writing to the record, as well. And I will yield the remaining time to Congressman Grijalva.

Mr. GRIJALVA. I think, to the point that was made regarding other land settlements that have the prohibition, the two that I worked on have been in cooperation and consultation with the tribes.

We have an existing settlement here. We have a piece of legislation that undoes that settlement. And that is the fundamental difference.

The fact that gaming is central to the debate doesn't take away the, doesn't take away my concern about the legal precedent that is being set here. With that, I yield back.

Mr. YOUNG. I just want to thank the panel again, and appreciate your patience. It has been a good two hours, a little more than two hours. So thank you very much. This hearing is adjourned.

[Whereupon, at 4:56 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

The documents listed below have been retained in the Committee's official files.

- Franks, Hon. Trent, a Representative in Congress from the State of Arizona
  - Brewer, Hon. Janice K., Governor, State of Arizona, Letter submitted for the record in support of H.R. 2938
  - Tobin, Hon. Andy, Speaker, Arizona House of Representatives, Letter submitted for the record in support of H.R. 2938
- Grijalva, Hon. Raúl M., a Representative in Congress from the State of Arizona
  - 71 letters in opposition from other tribes
  - Map of the Arizona Indian Land Areas Judicially Established in 1978
- Gámez, Hon. Adolfo, Mayor, City of Tolleson, Arizona, Statement submitted for the record by Hon. Robert Barrett, Mayor, City of Peoria, Arizona
- Lieberman, Phil, Council Member, City of Glendale, Arizona, Statement submitted for the record by Hon. Robert Barrett, Mayor, City of Peoria, Arizona
- Scruggs, Elaine, Mayor, City of Glenndale, Arizona, including statements of Vice Mayor Steve Frate and City Council Members Joyce Clark, Mannu Martinez, and Yvonne Knaack, Statement submitted for the record--116 pages
- Smith, Diane, Owner-Founder, Marathon Development, Statement submitted for the record
- Tohono O'Odham Nation of Arizona, Supplemental testimony 97 pages
- Tovar, Hon. Anna, Arizona State Legislature, Statement submitted for the record

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